A. Yeah, had a shotgun.

Q. What kind of shotgun?

A. I don't know.

Q. Was it regular length?

A. Just a regular shotgun.

Q. You couldn't tell anything too specific about it?

A. No.

Q. Can you describe that man in general, what did he look like?

A. Well, he was just a tall, slender fellow, that's about all I could——

Q. What was his manner? Did he seem nervous or calm or what?

A. Yeah, he was pretty nervous, seemed to be.

Q. Now did you see anybody else with him?

A. No at that time I didn't see anybody else.

Q. Did you subsequently see anyone else?

A. Yeah, when I was sitting down on the floor, [2114] and I saw the man pass in front of me, that's the first time I knew that there was anybody else in the bank. There was two of them.

Q. Can you describe that second man?

A. Well, he was medium built and had on a light coat and a dark hat and a dark pair of glasses, and that's about all I could tell you.

Q. He had on sunglasses?

A. That's right.

Q. Was he armed?

A. I didn't see a gun; I don't know.

Q. You didn't see his gun?

A. No, sir.

Q. Mr. Conquest, I'm going to ask you whether you think you could identify that second individual or you might be able to identify that second individual if you were to see him?

A. I don't believe I could identify him.

* * * * *

[2115] * * * * *

CAROLE HOOPER * * *

DIRECT EXAMINATION

By Mr. Knight:

* * * * *

[2116] Q. Where were you working last April 24th?

A. I was a student at David Lipscomb College.

Q. And did you customarily have lunch with your friend, Miss Basham?

A. Yes, almost every day we had lunch together.

Q. Do you recall whether you went to the Commerce Union Bank out there to have lunch with Miss Basham?

A. Yes, sir, I did.

Q. Tell the jury what happened after you got to the bank?

A. Well, I was about to walk into the door, and I didn't know whether I was late or not, and I looked at my watch to check the time and I stepped inside the door, and Miss Basham wasn't ready to go with me, so I was standing right in the door waiting for her to get through. I think she was waiting on a customer at the time. I was carrying on a conversation with some of the other tellers, and then we weren't talking any more, and I was standing in the door, and I heard the door to my right open, and I turned around, and I looked, and I saw this man coming in.

* * * * * * *

[2117] * * * * *

A. And this man had just stepped inside the door and was pulling a stocking down, and he had it about right at his chin when I turned around and saw him.

Q. All right, what did you do at that point?

A. Well, I realized what was about to happen, and I just turned around and walked out the door by which I was standing.

Q. And where did you go?

A. I went to the grocery store which is down on Hyde's Ferry Pike, and told them what was happening and asked them to call the police.

Q. Did you see Mr. Hugh Bradley down there?

A. Yes, sir.

Q. And told him the bank was about to be robbed?

A. Yes, sir.

Q. And do you recall what happened down there when you told them that?

A. Well, he didn't believe me at first, and he walked up to the bank to get the license number of a car which I saw, and while he was gone, I believe it was his assistant manager who called the police, and——

[2118] Q. Now describe the car that you saw that Mr. Bradley got the license number off of.

A. It was a 1967 Pontiac, metallic blue, with a black vinyl top.

Q. And after Mr. Bradley got the license number, what did you all do?

A. I stayed inside of the store with one of the other checkers and we watched up toward the bank, and then Mr. Bradley and I believe it was the assistant manager with him were outside in front of the store also.

Q. Did you see anyone leave the Bank?

A. Yes, sir, there were two men who came out and got in this Pontiac and left. They went down the hill towards Hyde's Ferry Pike.

* * * * *

[2119] HUGH MADURA BRADLEY * * *

DIRECT EXAMINATION

By Mr. Knight:

Q. What is your occupation, Mr. Bradley?

A. Manager of a store.

Q. You are manager of a grocery store?

A. Yes, sir.

Q. Were you the manager of a grocery store last April?

A. Yes, sir.

Q. Out in Bordeaux?

A. Yes, sir.

Q. Where was that store located with relation to the Bordeaux Branch of the Commerce Union Bank?

A. It's approximately a hundred yards southeast of the bank.

Q. Is it on the far side of Old Hyde's Ferry Road?

A. Yes, sir.

Q. All right, sir. Do you recall on the 24th of April seeing a young lady named Carole Hooper, who came into your store?

A. Yes, sir.

[2120] Q. Do you recall that she told you that the bank had just been robbed up there?

A. Yes, sir, I sure do.

Q. Would you tell the jury what you did after you received that information?

A. I run outside, the assistant manager, I told him to call the police, and I went outside to see if I could get the license number and model and make of the automobile which from the store I couldn't see the number, and I went up near enough and got the number off of the automobile.

Q. All right, sir, and what did you do after you had gotten the license number?

A. I went back down to the store.

Q. And what did you do about the license number?

A. Well, I just held it until after the robbers left, and as soon as they left, I went up to the bank to tell Jack, the boy that was assistant manager up there, that we had called the police, and just about the time that I had finished the conversation with him, the police drove up, and I gave the slip of paper to the policeman.

Q. The slip of paper with the license number of the Pontiac?

A. Yes, sir.

Q. Do you remember what color this Pontiac was?

A. Yes, sir, it was dark blue with black vinyl top.

[2121] Q. Was it a late model Pontiac?

A. Yes, sir, late model.

Q. What did you do after you came back from the bank with the license number? Where did you stand?

A. Just on the inside of the store building.

Q. Were you watching the bank?

A. Yes, sir.

Q. What did you see?

A. Oh, after this lady first told me this, I imagine it was five, six, seven, eight minutes that the two men came out of the north door, the door nearer the Clarksville Highway, and the taller man went to the driver's side of the car and the other man got in the opposite side, and they started off down towards the store and turned right there on Old Hyde's Ferry Road.

Q. Now the man who was driving, how was he dressed? Do you remember anything about how he was dressed?

A. He had on a tan trench coat, a brown hat, and some dark glasses.

Q. Would you say he was small, medium, or large in build?

A. He was average, about five foot ten, five eleven, somewhere in that area.

Q. And with respect to weight, would you say he was small, medium or average?

[2122] A. Well, a hundred sixty-five to a hundred and seventy-five, I'd say.

* * * * *

[2123] * * * * *

[2124] * * * * *

GILBERT VERNON DAVIS * * *

DIRECT EXAMINATION

By Mr. Knight:

* * * * *

[2125] * * * * *

Q. On the 24th of April, this year, did you get some information regarding a robbery of the Bordeaux Bank?

A. I heard the call come in over the radio in the car.

Q. Did you receive information with respect to a supposed get-away car involved in this robbery?

A. They gave the description over the radio of what it was.

Q. What was the description given?

A. It was a '67 Tempest, and gave the license number, and I was just riding around the territory and happened to run across it.

Q. Do you recall the color of the car, the description?

A. I believe it had a blue and vinyl top.

Q. Blue with a vinyl top, is that right?

A. Yes.

Q. They also gave the license number?

[2126] A. Yes, sir.

Q. Did you subsequently find this car?

A. Yes, sir.

Q. Where was the car located?

A. It was sitting in the parking area at the Convalescent, which is the old TB Hospital, at the very end of the lot. I was going out Tucker Road and just happened to notice it, and turned around and went back.

Q. Went back up there and checked the license number?

A. Checked it back through headquarters and that was the car.

Q. And did it correspond with the license number that you had been given?

A. Yes, sir.

* * * * *

[2127] WILLIAM HARDING, * * *

DIRECT EXAMINATION

By Mr. Knight:

Q. Where do you work, Mr. Harding?

A. Metropolitan Convalescent Hospital.

* * * * *

Q. In the Bordeaux Community?

A. In the Bordeaux Community.

Q. Where were you working last April 24th?

A. Metropolitan Convalescent Hospital.

* * * * *

[2128] * * * * *

Q. Do you recall about what time you went to work that morning?

A. Well, I went to work at six o'clock that morning.

Q. All right, sir. As you were coming into the parking lot out there, did you notice any car parked in the parking lot?

A. Yes, sir, I did.

Q. What kind of car was that?

A. In my estimate, I'm not too familiar with cars, I estimate it was a white '56 Cadillac. That's what I thought it was.

Q. Yes, sir. White Cadillac, and you thought at that time it was a 1956, is that right?

A. Yes, sir.

Q. Had you previously seen that car parked out there?

A. Yes, sir, I did.

Q. When had you seen it?

A. The day before that.

Q. Why had you particularly noticed this car, if [2129] you had?

A. See, on my job out there is to check cars on the parking lot, if they are there over a day, that I will have to call the tow-in or either tell my supervisor, and he will give me orders to call the tow-in to tow them off, because we have so many visitors visiting the people that are in the Convalescent Hospital that can't have no room for no cars that are broke down and don't belong to employees.

Q. So it was your job to see whether there were any cars out there that didn't have any business being there?

A. Yeah.

* * * * *

Q. Was that car still parked there Monday afternoon, [2130] that Cadillac?

A. No, sir, I believe it was—in place of it; I believe it was a GTO.

* * * * *

Q. Can you remember that car that was parked out there in place of the Cadillac?

A. Yes, sir, it was in the identical place the Cadillac was parked in.

Q. How was that called to your attention? How did you find out about the Pontiac?

A. About the Pontiac?

Q. Yes, sir.

A. I was sitting in the orderly room, and a nurse come in and said, oh, the hills are full of policemen, so I thought they was playing, and I got up, all of us got up and went, and I don't know, the hill was full of policemen, and I didn't know what happened, so we all went on down there, and being nosy, I went on down there, and some to find out that the Bordeaux Bank had been robbed, and there was the car that they was in.

* * * * *

[2131] * * * * *

Q. Now were you interviewed by the FBI about two or three days after this robbery?

A. Yes, sir, I was.

Q. And during that interview, were you shown a white Cadillac automobile?

A. Yes, sir, I was.

* * * * * * *

Q. Did you tell them that you were pretty positive it was the same car?

A. Yes, sir, I did.

Q. Are you positive that it was the same car?

A. Yes, sir, I'm positive that it was the same car.

* * * * * * *

[2132-2133] * * * * * * *

[2134] * * * * * * *

FRANCIS W. NORWOOD, * * *

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Norwood, I believe you have already testified in this case briefly?

A. Yes, sir, I have.

Q. And you did testify that you are an FBI agent and you have been involved in the investigation of this case, is that correct?

A. Yes, sir, that's correct.

Q. As part of the investigation in this case, did you have occasion to examine a 1961 white Cadillac?

A. Yes, sir, I did.

Q. Who is the owner of that car?

A. On checking the registration, it was determined to have been owned by Mr. Albert Werthan.

Q. Were you present when this Cadillac was shown [2135] to a man named William Harding?

A. Yes, sir, I was.

Q. Where did that take place?

A. It took place on Stanford, near the intersection of Stanford and Broadmore.

Q. And was Mr. Harding an employee of the Davidson County Convalescent Home?

A. I was given to understand that he was.

Q. All right, sir. And that was the white Cadillac that was shown to that individual, is that right?

A. Yes, sir, that's correct.

Q. Did you examine this car to any extent?

A. Yes, sir, I did.

Q. What did you find in the car?

A. In the front seat of the car, on the floorboard in the front, I found two tools, normally referred to as tire tools, the type that have a pointed end on one end and a lug wrench on the other. I also observed but I did not remove from it an empty Coca-Cola bottle.

In the front floorboard was also a large screwdriver, and in the rear of the car, I found an empty package of Pall Mall cigarettes. I found a catalog of some type which apparently came from Birmingham, Alabama, and on removing it from the car to look at it, I observed a money wrapper had been dropped on the floor under this catalog, [2136] two hundred fifty dollar denomination money wrapper.

Q. Do you recall any other tools that you found in there?

A. Yes, there was a twelve-pound sledge hammer lying across the floorboard on the back of the car, on the back seat between the front and the back seat, which was of Japanese make.

Q. Do you recall any clothing of any kind that you found in there?

A. No, sir, I don't recall any clothing. There was a sales tag showing that a pair of work gloves had been purchased. As I recall, the price on them was fifty-seven cents, which would indicate a rather inexpensive pair of gloves.

* * * * * * *

[2137] * * * * * * *

ALBERT WERTHAN, * * *

DIRECT EXAMINATION

By Mr. Knight:

* * * * * * *

Q. Are you the owner of a 1961 white Cadillac automobile?

A. It's a corporation-owned car, yes, sir.

[2138] Q. Do you keep that car at your home?

A. Yes, sir.

Q. Do you—incidentally, has it been your habit to leave the keys to that car in the ignition?

A. Yes, sir.

Q. Did you do so on the evening of the 17th of April of this year?

A. To the best of my recollection.

Q. To the best of your recollection.

A. If that's the date, I would assume that that would be the correct date, sir.

Q. You did leave the keys to your car in the ignition?

A. Yes, sir.

Q. Where was your car parked on that evening?

A. In the garage.

Q. Just tell the jury what you heard on the evening of the 17th.

A. I was in the living room where I have a desk, and I was working at my desk, and I heard a car drive—it's a gravel driveway, and I could hear it move at a very fast—sounded like it was moving at a very fast pace, and I thought it had gone around the circular part of my driveway in the front, and I got up from my desk and walked to the window and looked, and I saw nothing.

[2139] I had assumed, as it happened on previous occasions, that somebody had come into the driveway and realized that they weren't on a public road and turned around and left.

Q. Does your house sit back somewhat from the street, or from the road out there?

A. Yes.

Q. Is it somewhat isolated in terms of other houses being in the vicinity?

A. Yes.

Q. Now the morning of the 18th, did you discover that your car had apparently been stolen?

A. Yes.

Q. Was it subsequently returned to you?

A. Yes.

Q. Approximately how long after that was the car returned to you?

A. I would say, sir, ten days or two weeks. I [2140] don't recall exactly.

* * * * * * *

[2141] * * * * * * * *

The Court. Well, did you have a money wrapper in there, Mr. Wertham?

The WITNESS. I did not.

* * * * *

[2142] * * * * *

HOWARD LEE WHITAKER, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * *

Q. Mr. Whitaker, do you know any of the defendants in this case?
A. Yes, sir.
Q. Do you know the defendant, Dickie Self?
A. Yes, sir.
Q. Do you know any of the other defendants?
A. I know Sammy and Mrs. Ethridge and Gary.
Q. Sammy Cole and Mr. and Mrs. Ethridge?
A. Yes, sir.
Q. Do you recall being in the company of Mr. [2143] Self last April the 17th, which was Bobby Knight's birthday?
A. Yes, sir.
Q. Where were you and Mr. Self on that evening?
A. We was out riding around out in Percy Warner Park.
Q. Who else was with you?
A. Leslie Belcher and Peggy May.
Q. Whose car were you driving?
A. Bobby's.
Q. Bobby Knight's car?
A. Yeah.
Q. What kind of car was that?
A. '55 Studebaker, I believe; I'm not sure.
Q. Do you remember what color it was?
A. Brown, light brown.
Q. Anything happen to Bobby Knight's car on that occasion?
A. Yes, sir, we wrecked it twice.
Q. You did what?
A. Wrecked it twice.
Q. Wrecked it twice?
A. Yes, sir.

Q. The second time you wrecked it, was it in such condition that you couldn't drive it?

A. Yes, sir.

[2144] Q. And what happened after that?

A. Well, one of the girls had her ankle hurt, I think. Yeah, it was her ankle, Peggy May, and I toted her out of the car down to this field, and Bobby and Dickie said they was going down and see if they could get us a way home, and they come back in about ten minutes then driving a car.

Q. Driving a car?

A. Yeah.

Q. Now you say this happened in Percy Warner Park, is that right?

A. Yes, sir.

Q. What kind of a car were they driving when they came back?

A. A white Cadillac.

Q. Do you know about what model it was, or can't you say?

A. No, sir, I don't know.

Q. But you do know it was a white Cadillac?

A. Yes, sir.

Q. Did Dickie Self tell you anything about how that car was stolen or where it was stolen from?

A. Well, said they went up to this guy's garage, and it was in there with keys in it, and they opened it up and backed it out of the driveway and drove it on up to where we was at and picked us up.

[2145] Q. All right. Now what happened after they brought the car back? Did they take you all home?

A. Well, we took the two girls home first, and then me and Dickie and Bobby to Bordeaux, and I took him to the hospital. He had hurt his head, and Bobby said he was going to ditch the car, so it was ditched.

Q. He said he was going to do something with the car?

A. Yeah, just take it and leave it somewhere.

* * * * *

[2146] * * * * *

Q. As you all were leaving Percy Warner Park, did Dickie Self point out to you the place where they had stolen the car?

A. Yes, they pointed out the driveway. I couldn't see the house. The house was sitting quite a ways off the road.

Q. Did you see any other houses in the area?

A. No, sir.

Q. Was it pretty isolated area?

A. Yes, sir, until we got down to Belle Meade Boulevard or something like that. I don't know.

Q. Did Self later tell you anything about this car?

A. I think it was two or three months after the bank robbery, something—I either read it in the paper or he told me or something, that it was used.

Mr. BATEMAN. I object to that. Either read it or was told. Your Honor, this is the same quality——

[2147] The COURT. He said he heard—used that as the fixing of the time, didn't he?

Mr. BATEMAN. I understood him to say that he either read it in the paper or this defendant told him something.

Mr. BINKLEY. Your Honor, he said he was told some time after the robbery and didn't know who it was told him about it, and I would like to object to this on the ground that it couldn't have been told in furtherance of the conspiracy.

The COURT. Restate the question again to clarify it.

By Mr. KNIGHT:

Q. Howard, sometime after the robbery, did Dickie Self tell you something about this car?

A. After the FBI questioned me, I think it was, he said that it had been used in the robbery or something like that. I'm not really sure.

Q. He did say it had been used in a robbery?

A. Yes, sir. I'm not sure.

Q. What robbery did he say it had been used in?

A. Bordeaux.

Mr. BINKLEY. We object to that.

The COURT. Who is this?

Mr. KNIGHT. Dickie Self.

[2148] The COURT. On what ground?

Mr. BATEMAN. The witness said two or three months after it happened, and he couldn't say who it was, and I think it has to be in the conspiracy to be held against the other co-conspirators.

The COURT. Well, I'll admit this as to the defendant Richard Self, and the jury will consider the testimony only with respect to that particular defendant and not as having any bearing upon the other defendants who are on trial.

* * * * *

[2149–2150] * * * * *

[2151] * * * * *

Mr. KNIGHT. Yes, sir, I would like to—the witness has stated that he either saw this on television—

The COURT. Don't state——

Mr. KNIGHT. That's the statement, the last paragraph.

[2152] The COURT. All right, in view of this statement dated November the 1st, 1967, and purportedly signed by the witness, you will have to ask him about that, I'll allow you to examine him.

REDIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Whitaker, do you recall giving a statement to Mr. John Rodgers of the FBI, this gentleman here?

A. Yes, sir.

Q. A statement taken around November 1st, 1967?

A. Yes, sir.

Q. Do you recall making this statement:

"Dickie told me some time after the Bordeaux Bank robbery that this same Cadillac was the car used in the Bordeaux Bank robbery"?

A. I think I also mentioned that either he told me or I read it in the paper or somewhere is the way I said it.

* * * * *

Q. Did you make that flat statement?

A. Yes, sir, but I also—but I think I said I'm not sure, I either read it in the paper or he told me is what I said.

[2153] Q. You signed this statement as written?

A. Yes, sir.

Q. And this statement contains the flat statement that Dickie Self told you that this was the same car, contains no reference to seeing it on television or reading about it in the newspaper, is that right?

A. Yes, sir.

Q. And that is your statement to the FBI?

A. I guess it is, yes, sir.

* * * * *

[2154] * * * * *

The Court. All right, but the written statement itself, according to your testimony, contains the statement that you got the information from Self?

The Witness. Sometime after he was questioned by the FBI.

The Court. Sometime after he was questioned by the FBI, and contains no reference to television or newspaper?

The Witness. No, sir.

The Court. All right, overrule the motion. The whole thing is a question for the jury.

* * * * *

[2155] * * * * *

[2156] * * * * *

REDIRECT EXAMINATION (Further)

By Mr. Knight:

Q. Mr. Whitaker, are you trying to leave the impression that you thought Dickie Self learned about the use of this car from the FBI?

Mr. Bateman. Object to the form of that question?

Mr. Knight. Just asking about the impression.

The Court. Overrule.

By Mr. Knight:

Q. Is that the impression that you are trying to leave?

A. Yes, sir.

[2157] Q. You are now saying that Dickie Self got this information from the FBI?

Mr. Wilson. That's what he's been saying all along, if Your Honor please.

Mr. Bateman. Object to that.

The Court. Overrule.

Mr. Knight. It's not, and I object to that.

By Mr. Knight:

Q. Is that what you are saying now?

A. Yes, sir.

Q. Did he tell you that?

A. Yes, sir.

Q. The FBI had told him this car was used in the Bordeaux Bank robbery?

A. They had questioned him about it.

Q. Did he tell you he had gotten his information from the FBI about it?

A. He said he was questioned by the FBI.

Q. I repeat my question. Did he tell you that he had gotten his information about the car from the FBI?

A. Yes, sir.

Q. He did. Did you tell Mr. Rodgers that at the time he questioned you?

A. I think it's in the statement that I did.

Q. That you——

[2158] A. I said that he had told me about it sometime after the FBI had questioned him.

Q. Yes, sir, but you did not tell him, did you, that he had gotten the information from the FBI?

A. No, sir. I just presumed that he did though.

Q. Did you tell Mr. Rodgers that you assumed that he did?

A. No, sir.

Mr. Bateman. I object to the cross examination of his own witness.

The Court. I've already permitted him to cross examine him in view of the statement he previously gave the FBI.

Mr. Bateman. Your Honor, this is not inconsistent with the statement.

The Court. Overrule the objection. It speaks for itself.

* * * * *

[2159] LESLIE MARIE BELCHER, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Knight:

* * * * *

Q. Were you wish Dickie Self last April out in Percy Warner Park?

* * * * *

[2160] * * * * *

Q. What did you all do for transportation after the car got wrecked?

A. Rode home.

Q. You did what?

A. Rode home.

Q. Drove home. All right, now where did you get the car to drive home?

A. I don't know. They just got a car.

Q. Who is they?

A. Dickie and Bobby.

Q. Dickie and Bobby. What kind of a car did they get?

A. White one.

Q. And what make of car?

A. Sir?

Q. What make of car? Was it a Chevrolet or Plymouth or what make?

A. Cadillac, I think.

* * * * *

[2161–2162] * * * * *

[2163] * * * * *

Q. What, if anything, did Dickie Self tell you about what had happened to that car?

A. They moved it.

Q. Said it had been moved?

A. Yes.

Q. Did he tell you why it had been moved?

A. No, sir.

Q. Did he tell you—what did he tell you about what use was going to be made of that car?

A. I don't know.

Q. He told you nothing about what use would be made of the car?

A. No, sir.

Mr. **Knight**. Your Honor, I believe we have the same situation, and I would like to ask permission to do the same thing with this witness.

The **Court**. Let me see the statement.

Mr. **Knight**. There are several statements [2164] that are inconsistent.

The **Court**. This statement is dated October 30, 1967, and purportedly signed by this witness.

Ask her if she signed it, and in view of the testimony that she's given and the contents of that statement, I think you are permitted to cross examine her.

By Mr. **Knight**:

Q. Miss Belcher, I'd like to ask you if you remember an interview that was conducted by Mr. Rodgers here with you some weeks ago.

A. Yes, sir, I signed the statement.

Q. You remember signing a statement at that time?

A. Yes, sir.

Q. And do you remember talking briefly with Mr. Rodgers again this morning?

A. Yes, sir.

Q. Now in view of your testimony, I'd like to ask you whether—aren't you a little bit nervous this morning?

Mr. **Wilson**. Object to any leading.

The **Court**. A little bit nervous, overruled.

The **Witness**. Yes.

By Mr. **Knight**:

Q. Are you scared?

[2165] A. Yes.

Q. Tell the Court why you are scared.

A. Just scared.

Q. Are you afraid of these people over here?

Mr. **Lowery**. Object to this.

Mr. **Bateman**. Now I object to that, if the Court please.

The **Court**. Sustained.

Mr. **Knight**. Your Honor, I'm getting to the reason——

The **Court**. Well, just state frankly why you are afraid, if you are under any fear.

By Mr. **Knight**:

Q. Can you state why you are afraid?

A. (Witness shakes head.)

Q. You can't state that?

The Court. All right, go ahead and examine her.

By Mr. Knight:

Q. Now, Miss Belcher, when you made the statement to Mr. Rodgers, I'll ask you if you didn't make the following statement.

A. Yes, sir, I made the statement.

* * * * *

[2166] Q. You made the statement?

A. Yes, sir.

Q. I'm going to ask you about specific portions of the statement.

"On Bobby Knight's nineteenth birthday, we, Bobby Knight, Peggy May, Dickie Self, Howard Whitaker and I, were riding around in Percy Warner Park in Bobby's pink Studebaker car. He was drinking and wrecked the car. Peggy, Howard and I hid in the field so the park police wouldn't see us while Dickie and Bobby went to steal a car. They told us they would come by and blink the lights three times, and we could come out. They came back later in a 1965 Cadillac, white, and told us they had to roll a car out of the way to get to the Cadillac. They then drove Peggy and me home and left."

Now do you remember making that part of the statement?

A. Yes, sir.

Q. Is that the truth?

A. Yes, sir.

Q. All right. Now you further said that:

"Dickie told us that they went to Bordeaux in the Cadillac and got another car and then took the Cadillac to Parkview Hospital. It remained there [2167] sometime and each night we would drive by and check to make sure——"

A. Not each night, we didn't; we went by about twice.

Q. Did you go by about twice and check to see if the car was there?

A. We looked.

Q. That's true, is it not?

A. Yes.

Q. "About a week before the Bordeaux Bank robbery——"

Mr. **Wilson**. I object to the portions contained in this paragraph; that contains heresay.

The **Court**. Overruled.

Mr. **Wilson**. Has Your Honor read this portion of it?

The **Court**. Well, let's see.

Mr. **Wilson**. It would be the fourth paragraph, contains hearsay, and this is—evidently this is not a co-conspirator up here.

Mr. **Knight**. Your Honor, this evidence, I might say, is being offered as against the defendant Dickie Self.

The **Court**. This will be—the fourth paragraph, with respect to—what is this defendant's name?

[2168] Mr. **Knight**. Self.

The **Court**. About a week before—as to the defendant Self only, and not with respect to the other defendants, have materiality only as to him and the jury will so regard it.

Mr. **Bateman**. Do I understand that this statement is being introduced into evidence, if the Court please, for probative purposes?

The **Court**. I think it speaks for itself. I have permitted him to cross examine this witness with respect to a prior statement given by her to the FBI which she admits she gave and signed. Now the truth of her testimony is a matter that addresses itself to the jury.

Mr. **Bateman**. Well, I would like to have—

The **Court**. Whether what she now is saying is truth, whether it is inconsistent with the prior statement or what she said in the prior statement is true, it's all for the jury to decide.

Mr. **Bateman**. I would ask the Court to instruct the jury that the statement is used only for purposes of contradiction.

The **Court**. That's right, for purposes of contradiction and impeachment as to whether the witness is—it's admissible for that purpose..

[2169] Mr. **Knight**. To the extent that the witness affirms some of this as being true, that would be evidence——

The **Court**. It might be or might not be, it would be for the jury to determine whether or not she is telling the truth if she affirms any part of that statement.

Mr. **Knight**. Yes, sir.

Mr. **Wilson**. For the purposes of the record, if this is permitted to go in as it is, I do move for a severance on the part of Gary Ethridge.

The **Court**. Overruled. Go ahead.

By Mr. **Knight**:

Q. All right, Miss Belcher, reading the fourth paragraph of this statement:

"About a week before the Bordeaux Bank robbery, we went by and the car was gone. Dickie at first kidded us about it being gone, and then told us they had moved it and that Gary Ethridge was going to use it on a big job."

A. No sir, that part of it is not true. I didn't hear that.

Q. Did you make that statement to Mr. Rodgers?

A. I made it, but it was a lie.

Q. You made that statement to Mr. Rodgers, but [2170] it was a lie?

A. Yes, sir.

Q. Why did you make——

A. After the car left the Parkview Hospital, I know nothing about it.

Q. And Dickie Self didn't make this statement to you?

A. No, sir, he didn't make that statement. He didn't say anything. He just said the car was gone.

Q. And you just made that up about what Dickie Self said?

A. Yes, sir.

Q. Why did you make that up?

A. I don't know. Just made it up.

Q. Just made it up.

All right.

"After seeing the account of the Bordeaux Bank robbery on TV, I asked Dickie if the white Cadillac in the robbery was the one he stole, and he said it was the same one he and Bobby Knight stole on the night we were in the park."

Now did you make that statement up?

A. No, that statement is true.

Q. That statement is true?

A. Yes.

[2171] Q. Miss Belcher, you have admitted that some of these statements are true with respect to Dickie Self stealing this car.

A. Yes.

Q. We get to a part of the statement that mentions the defendant Ethridge, and you say those statements are not true.

A. Yes, sir.

Q. Now is there any reason why you would distinguish between Mr. Self and Mr. Ethridge, and why you would be willing to say that a statement about Mr. Self was true but a statement about Mr. Ethridge was not true?

A. No, sir.

Q. No reason?

A. No, sir.

*   *   *   *   *

CROSS-EXAMINATION

By Mr. **Wilson**:

Q. Miss Belcher, were you told if you didn't sign this statement that they were going to give you five years?

A. No, sir, I was not told that.

Q. You weren't told that?

A. No, sir.

[2172]   *   *   *   *   *

By Mr. **Bateman**:

Q. Miss Belcher, when did you see the account of the Bordeaux Bank robbery on television?

A. I seen it on the news that night.

Q. The same day that it was—that it took place?

A. It was that night.

[2173] Q. And was there anything on the news that night about a white Cadillac having been used in the robbery?

A. I don't remember. I just remember seeing the Bordeaux Bank robbery, you know, just hearing about it on the news as I was washing dishes.

Q. Well, your statement says after seeing the account of the Bordeaux Bank Robbery on TV, I asked Dickie if the white Cadillac in the robbery was the one he stole, and he said it was the same one he and Bobby stole on the night we were in the park.

A. What I meant by that, you know, I had heard about the bank robbery, seen it on TV or heard it on the radio, and I asked Dickie about it, and he said yes.

Q. Where did you first learn of a white Cadillac having been used in——

A. From Dickie and then—mainly.

Q. You say after having seen the account on the news, there was nothing on that newscast——

A. I had heard, you know, talk that the Cadillac was used in there, and I didn't remember the car, whether it was on the news or where it was at, but I had heard it, that the white Cadillac was used, but I asked Dickie about it, and he said it was.

* * * * *

[2174–2176] * * * * *

[2177] * * * * *

REDIRECT EXAMINATION

By Mr. KNIGHT:

* * * * *

[2178] * * * * *

Q. You're testifying that Gary Ethridge never drove by your house in a blue Thunderbird?

A. No, sir.

Q. Did you make a statement to this effect to Mr. Rodgers?

A. Yes, sir.

Q. And that's not a true statement?

A. No, sir.

Q. Did you tell Mr. Rodgers that on that occasion when Mr. Ethridge pulled up in the Thunderbird——

Mr. WILSON. I'm going to object to this, it has no bearing whatsoever on the allegations contained in the indictment. It is not a signed statement. It is a narrative by Mr. Rodgers that he is [2179] attempting to cross examine his own witness on.

The COURT. This is a—you are representing that such a statement was made?

Mr. KNIGHT. Yes, sir, and she's admitted that the statement was made.

The COURT. By whom?

Mr. KNIGHT. By her to Mr. Rodgers.

The COURT. Detailing what she saw or——

Mr. **Knight**. What she saw and what Dickie Self said to her.

The **Court**. Why wouldn't that be admissible?

Mr. **Wilson**. Because, if Your Honor please, it has to do with matters and things not concerned in this indictment, not concerned in this conspiracy and it imputes other matters to other parties.

Mr. **Knight**. This is the statement. [handing document to the Court].

The **Court**. Yes, I think that's competent.

Mr. **Bateman**. Your Honor, I want to object on the grounds that these conversations are not described in any detail; they are not specific as to time, place or who was present.

The **Court**. The time is stated in that statement.

Mr. **Bateman**. They are entirely too vague.

The **Court**. Overruled.

[2180] Mr. **Binkley**. Has Your Honor declared this witness a hostile witness?

The **Court**. I have already done that, haven't I?

Mr. **Binkley**. I don't think she's admitted making this statement.

The **Court**. You can question her about it before you read the statement, about its substance and content. I don't know whether she would or not.

By Mr. **Knight**:

Q. I believe you testified did you not, that Gary Ethridge has not been near your house?

A. No, sir, I met Gary Ethridge one time, and that was at Lee's Pizza House, and I said, hi, and he said, hi.

Q. Your present testimony is that he's never been by your house on 16th Avenue?

A. Yes.

Q. I believe you testified that you did tell Mr. Rodgers that Gary Ethridge came by your house sometime last August in a Thunderbird automobile?

A. Yes, sir.

Q. You did tell him that?

A. Yes, sir.

Q. Did you also tell him at that time Gary told [2181] Dickie to come on, they had a job cased out?

A. Yes, sir.

Q. That they wanted him to go along?

A. Yes, sir.

Q. Did you make that statement?

A. Yes, sir.

Q. Is that true?

A. No.

Q. Did you also state that Dickie immediately got out of the car and joined Gary and other individuals in the Thunderbird?

A. Yes, sir.

Q. Did—and they left?

A. Yes, sir.

Q. Did you make that statement?

A. Yes, sir.

Q. Is that a true statement?

A. No, sir.

Mr. **Binkley**. May it please Your Honor, I don't see that this pertains specifically to my client, but to allow the District Attorney to read a statement that's not admissible about damaging items on a witness that has only failed to answer one question the way he asked it is so prejudicial——

The **Court**. He cross examined her and asked [2182] her about this in advance, and she contradicted it, and it is inconsistent with the statement that's being read now.

Mr. **Binkley**. Well, I think we are entitled to an instruction to the jury that this shouldn't be considered as true.

The **Court**. The statement, prior statements may be used for the purpose, if they are inconsistent with the witness' present testimony, ladies and gentlemen of the jury, may be used for the purpose of contradicting the witness or impeaching her testimony. To the extent that she affirms and agrees with statements that have previously been made after she has once been allowed to be cross examined in this way might or might not constitute the truth, that's a question for the jury to determine. You must determine here credibility on all phases, and all aspects, of her testimony, and I'm permitting this statement to be used for purposes just indicated, for cross examining the witness in order to get at the truth to be determined by the jury. All right, go ahead.

By Mr. **Knight**:

Q. Did you further state that same day Dickie came back later that night and said they had not pulled the job because there was a night watchman, and they could not get [2183] in without killing him, and they didn't want to do that? Did you make that statement?

A. I don't remember. Well, it's not true.

Q. My question is did Dickie Self make that statement to you?

A. No.

Mr. BATEMAN. I thought his question was did she make that statement.

By Mr. KNIGHT:

Q. Did you make that statement to Mr. Rodgers?

A. Yes, I did.

Q. Was that statement true or false?

A. False.

Q. Now I believe you have testified that you had seen Mr. Ethridge at the pizza parlor.

A. Yes, sir.

Q. Now the times that you were at the pizza parlor with Dickie Self, did you hear conversations by Dickie Self pertaining to any criminal activities?

A. No, sir.

Mr. BATEMAN. Object to that question.

The COURT. She said no.

Mr. KNIGHT. Now, Your Honor, we have the same situation.

The COURT. Let's see that statement.

[2184] Mr. WILSON. If Your Honor please, if she had said, yes, it wouldn't have been permissible.

The COURT. You'll have to ask her about the—directly whether or not—what her testimony is to ascertain what her testimony is now with respect to these items covered——

Mr. KNIGHT. Yes, Your Honor, I've asked her if she——

The COURT. Then if she disagrees with this, you may cross examine her. If she agrees with it, there's no need to cross examine her.

Mr. KNIGHT. The direct question I asked was did she hear any conversation about criminal offenses while she was out there.

The COURT. In a general way, she's contradicted it, but I think you should question her as a witness first.

Mr. Knight. Yes, sir, I was just trying to do that without leading.

The Court. Just ask her whether or not she did so and so, or said so and so, or heard so and so.

Mr. Quillen. May it please the Court, on behalf of the defendant Beard, although the testimony does not deal with him, I do think the procedure being followed is highly prejudicial to all defendants [2185] charged. I think it's an improper way of getting the matter before the jury by innuendo.

The Court. Overruled.

Mr. Binkley. I would like to join that.

Mr. Wilson. And I join in behalf of Mr. and Mrs. Ethridge and Sammy Ray Cole; it can shed no light whatsoever.

The Court. I disagree; overrule.

Mr. Bateman. I object on the further grounds this is a vague summary written by Mr. Rodgers concerning the lady's statement.

The Court. I disagree with it being vague.

Mr. Bateman. Not connected to any incident whatsoever.

The Court. Overruled.

By Mr. Knight:

Q. Miss Belcher, I'm going to ask you whether or not certain statements are true. Can you tell me whether they are true or not?

A. Yes, sir.

Q. Is it true or not that during the period of time you were going with Dickie Self, he was constantly talking about his association with Gary Ethridge and other individuals in the gang and that you accompanied him on a number of occasions to Lee's House of Pizza? Is that a true [2186] statement?

A. We went to Lee's House of Pizza every once in a while, but the other part of it is not true.

Q. It is not true that he was constantly talking about his association with Ethridge and other members of the gang?

A. No, it is not true.

Q. Did you make that statement to Mr. Rodgers?

A. Yes, sir.

Q. Is it true or not that from conversation with Dickie Self and from conversations you overheard that Dickie had with other individuals, that you ascertained that these individuals were engaged in burglary?

Mr. Binkley. If Your Honor please, object to what she may have ascertained; he's not impeaching her.

The COURT. Say whether or not, how she derived it.

Mr. KNIGHT. I'm just asking her whether or not that is a true——

The COURT. Well, she ascertained, I don't think she could say that. She could say anything she heard, conversations.

By Mr. KNIGHT:

Q. As a result of conversations both with Dickie [2187] Self and conversations Dickie Self had with other people in your presence, did you learn that——

Mr. BATEMAN. Just a minute. If Your Honor please——

The COURT. That you had conversations to that effect.

Mr. BATEMAN. What other people said——

The COURT. I understood him to say by the defendant Self.

Mr. BATEMAN. In conversations with other people.

The COURT. That's right, overruled.

Mr. BATEMAN. There's got to be a showing that she heard it from Self or other people.

The COURT. If it was in his presence or involved him, it would be competent with respect to him. I'll admit it for that purpose.

Go ahead.

By Mr. KNIGHT:

Q. Is it true or not that the conversations with the defendant Self and conversations in his presence with other people, that you learned that he was engaged in burglary, and that Gary Ethridge planned some of the jobs, while some of the other members of the gang did the jobs on their own?

Mr. BINKLEY. Objection.

[2188] Mr. QUILLEN. I object.

Mr. WILSON. I object to it too, Your Honor.

The COURT. Haven't you already objected to it? I've overruled it three or four times.

Mr. BINKLEY. I want to be sure——

The COURT. You don't have to be sure by constant repetition. Objections will be noted, and we'll proceed with this trial.

Now go ahead, the objection is overruled.

By Mr. KNIGHT:

Q. Is that a true statement, Miss Belcher?

A. No, sir, that's false.

Q. Did you make that statement to Mr. Rodgers?

A. Yes, sir.

Q. And you are stating now it's not a true statement?

A. Yes, sir.

Q. Will you state whether or not it is true that often—that Dickie Self told you that often members of the gang would do jobs for Ethridge without charge since he would in turn bail them out of jail or hire them a lawyer or advance them money which they might need from time to time?

Now is that a true statement? Did he say that to you?

[2189] A. I don't know what Gary Ethridge and them done.

Q. That's not true?

A. No.

Q. Did you make that statement to Mr. Rodgers?

A. (Witness nods head.)

Q. Did you?

A. Yes.

Q. All right. I'll ask you whether this is a true statement or not.

Two or three weeks after the bank robbery, you were present, and there was a conversation in which Dickie Self said that he knew who robbed the Bordeaux Bank?

A. No, none of that's true either.

Q. That's not true?

A. No.

Q. Did you make that statement to Mr. Rodgers?

A. Yes.

Q. But that's not a true statement?

A. No.

Q. Is it true that at that time, Dickie named off Ethridge, Cole, and a third individual whose name you could not recall?

A. No, that's not true.

Q. That's not true?

A. No.

[2190] Q. Did you make that statement to Mr. Rodgers?

A. Yes.

Q. Is it true or not that you told Mr. Rodgers that you didn't know whether Dickie had received any money for the use of the Cadillac, but that you did know that if Dickie needed any sort of help from Gary, Gary would help him, and on the other hand, if Gary needed something from Dickie, Dickie would help Gary?

A. No sir, that's not true either.

Q. Did you make that statement to Mr. Rodgers?

A. Yes, sir.

Q. And you are saying that's not true?

A. Yes, sir.

* * * * *

RE-CROSS-EXAMINATION

By Mr. WILSON:

Q. Miss Belcher, why did you make that statement back then if it wasn't true?

A. I don't know, I just made it.

Q. You what?

A. I just made it up.

Q. You just made it up?

A. Yes.

Q. Was it because you were frightened of the FBI [2191] at that time?

A. I don't really know.

Q. Were you—have you ever told anybody that you were offered money to testify in this case?

A. No, sir.

Q. Have you ever been offered any to testify in this case?

Mr. MERRITT. Well, if he has some basis for that, I think he ought to make that basis known to the Court right now.

The COURT. I think so too. Do you have any reason to believe that?

Mr. MERRITT. In other words, apologize to the Court for asking the question if he's got no basis for it.

Mr. WILSON. If Your Honor please, I've been advised that the witness Howard Whitaker, the other adverse witness who was here just a moment ago, had made that statement.

The COURT. That this witness had been offered money?

The WITNESS. Oh, I believe what you've got there, that man got out there and served the subpoena on me, he said, you'll be paid or something like that, you know, and I was asleep.

[2192] By Mr. WILSON:

Q. So you said you thought you would be paid to come up here?

A. No. I didn't think I would be paid to come up here, and mama said she never heard of it, and I said I didn't either.

Q. That's the only information you have regarding that?

A. Oh, yeah.

Mr. Merritt. I ask that the Court instruct the Jury.

The Court. What's she talking about, appearance as a witness? I don't think the jury understands that.

Mr. Wilson. I don't think I owe anybody any apology.

The Court. No, I didn't say you owed anybody an apology, I said I thought you ought to state the reason or your source for asking such a question which you did.

* * * * *

[2193] * * * * *

[2194] * * * * *

Q. Before you came in here today, did you tell them that this second statement was untrue and that you didn't intend to testify to that?

A. No, sir.

Q. Did they ask you?

A. They asked me if it was true, and I said, yes.

* * * * *

REDIRECT EXAMINATION

By Mr. Knight:

Q. Miss Belcher, just to clarify this, just before you came in here to testify, did Mr. Rodgers talk to you?

A. Yes, sir, he read the statement to me.

[2195] Q. He read the whole statement to you, is that right?

A. Yes, sir.

Q. Did he read everything I've referred to this morning?

A. Yes, sir.

Q. And when he read that statement a few minutes before you came into Court, what did you tell him about whether that was true or false?

A. I told him it was true.

* * * * *

[2196–2200] * * * * *

[2201] * * * * *

Frank Joseph McDonald * * *

DIRECT EXAMINATION

By Mr. **Knight**:

* * * * *

Q. All right. Now in April of this year, did you own a 1957 blue and black Pontiac, license number AH–0018?

A. Yes, I did.

Q. Did something happen to that Pontiac sometime [2202] last April?

A. Yes, sir, it did.

Q. What happened to it?

A. It was stolen.

Q. Was that Pontiac subsequently recovered in the parking lot of the TB Hospital out in Bordeaux?

A. Yes, sir, it was.

Q. Do you remember the night your car was stolen?

A. Yes, sir.

Q. Can you state to the jury with any degree of accuracy when it was stolen and tell them the circumstances under which it was stolen?

A. I got home about 12:15, and I stayed up until about, oh, around twenty or twenty-five after one. I was sitting in the kitchen, and when I come home, my car, the Tempest was on the carport, and I pulled up right in back of it. I drive a company car.

Q. All right.

A. And I stayed—I was sitting in the kitchen until about twenty after one, and then I got up at six-thirty, and when I got up at six-thirty, I looked out—I was going in to fix some coffee, and I saw that both cars was gone, and I run and told my wife, my God, both automobiles is gone.

Q. All right, sir. Now you testified that the '67 Pontiac was parked first in your driveway, and your company [2203] car was parked behind it, is that right?

A. The Tempest was parked under the carport.

Q. All right. So that the company car was blocking the Tempest, is that right?

A. Yes, sir.

Q. Did you subsequently find the company car?

A. Yes, sir, I did.

Q. Where was it?

A. It was right—it had been pushed down the street.

Q. Just a few hundred feet there, or a short way down the street?

A. It was about seventy-five or a hundred feet down the street.

Q. All right, sir. And the Pontiac was missing, and you didn't recover that.

About what period of time were you missing that Pontiac?

A. Oh, about five or six days.

Q. And you say that it was stolen on the morning of April the 20th?

A. Yes, sir.

Q. Were there any items missing from the Pontiac when you recovered it?

A. Was what?

[2204] Q. Was there anything missing from the Pontiac when you found it?

A. Yes, sir, it was.

Q. What was missing?

A. The spare tire was gone, and the—some of the air duct—it had an air conditioner on it, and some of it was torn out from underneath the panel, and then my wife had some things in the back end of it that she had bought that day, some personal things, and they were gone.

Q. Have you ever recovered any of that property?

A. No, sir.

* * * * *

[2205] * * * * *

[2206] **EVERETT LEE STARKS** a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Merritt:

* * * * *

By Mr. **Merritt**:

Q. Mr. Starks, how old are you?

A. Nineteen.

* * * * *

[2207] * * * * *

Q. Why are you in the workhouse?

A. For burglary and felonious use of an automobile.

Q. Burglary and felonious use of an automobile?

A. Yes, sir.

Q. Have you been convicted of both of those charges?

A. Yes, sir.

Q. And they are both felonies?

A. Yes, sir.

Q. Have you been convicted for anything else?

A. No, sir.

Q. That conviction for felonious use of an automobile, is that the white Cadillac?

A. Yes, sir.

Q. Involved in this case?

A. Yes, sir.

Q. Now, Mr. Starks, do you know Gary Lee Ethridge, ever met him?

A. Yes, sir, I've met him one time.

Q. Met him one time?

A. Yes, sir.

Q. What about Georgia Ethridge, his wife?

A. Yes, sir, I've seen her.

[2208] Q. You've seen her?

A. Yes, sir.

Q. What about Sammy Cole?

A. Yes, sir.

Q. What about James Richard Self?

A. Yes, sir.

* * * * *

Q. All right, sir. Now I'll ask you, Mr. Starks, if sometime in May you were at the Pizza Parlor owned by Gary Lee Ethridge?

A. Yes, sir.

Q. What part of May was that?

A. The early part.

Q. The early part of May?

A. Yes, sir.

Q. Where is that pizza parlor located?

A. Clarksville Highway.

Q. On Clarksville Highway?

A. Yes, sir.

Q. Is that before you go across the bridge into [2209] Bordeaux?

A. Yes, sir.

Q. Do you recall who was there on that day you were out there at Ethridge's pizza parlor in addition to yourself?

A. Let's see. I was, Gary was working back behind the counter back there waiting on the customers.

Q. Gary was in there?

A. Yes, sir, he was, just some boys in there shooting the pinball machine, and eating pizzas.

Q. Who else was there? Any of the other defendants there?

A. Yes, sir, Sammy was.

Q. Sammy Cole?

A. Yes, sir.

Q. Did you have a converstation at that time with Ethridge and Cole?

A. No, sir—yes, sir, at that time I did.

Q. Yes, sir, at that time you did?

A. Yes, sir.

Q. Explain what that conversation was to the jury.

A. Well, they just said——

Q. Speak out now so the jury can hear you.

A. They said I was a good boy, and they wanted me to do some work for them, and I just told them that I didn't want to do nothing else, I wanted to straighten up and get [2210] straight, get everything against me straightened up.

Q. They said you were a good boy?

A. Yes, sir.

Q. And they wanted you to do some work for them?

A. Yes, sir.

Q. And you said that you wanted to straighten up?

A. Yes, sir.

Q. And didn't want to do any work for them?

A. Yes, sir.

Q. What kind of work did they tell you they wanted you to do?

A. Some burglaries.

Q. Some burglaries?

A. Yes, sir.

Q. Did they say or not who they wanted you to work with in these burglaries?

A. Kingfish's name was mentioned.

Q. Kingfish?

A. Yes.

Q. Is that James Larry Ferguson?

A. Yes, sir.

Q. What did they say about what they would do in connection with these burglaries?

A. Just split the money on it.

Q. What is that?

[2211] * * * * *

Q. What did they say about the—in doing burglaries, do you have to have tools or not?

A. Yes, sir.

Q. Was anything said about that?

A. We'll get the tools.

Q. What's that?

A. We'll get the tools.

Q. Who would get the tools?

A. Yes, sir.

Q. Who would?

A. They would.

Q. They would get the tools for you?

A. Yes, sir.

Q. And what was that about the proceeds again?

A. What do you mean?

Q. Of the burglaries, what about the proceeds, the money you would get?

A. Split it.

Q. And did you join in with them?

A. No, sir.

[2212] * * * * *

[2213] * * * * *

Q. I'll ask you if you had a conversation with Bobby Knight and Sammy Cole about the Bordeaux bank robbery?

A. No, sir, I didn't have no conversation with them.

Q. Well, let me let you read this, son, right down here, you read that over.

* * * * *

[2214] * * * * *

Q. Now do you remember the conversation about the bank robbery that you had there that night?

A. I didn't have no conversation about that.

Q. You don't recall any conversation about it?

A. No, sir, I don't remember saying that.

* * * * *

[2215] * * * * *

Q. You can't recall anything about Thursday or Friday the same week as the bank robbery at Lee's Pizza Parlor with Sammy Cole and Bobby Knight?

A. No, sir, I can't recall anything.

Q. Did you read over this statement to refresh your memory?

A. Yes, sir, I read it.

Q. Well, does that refresh your memory about that statement?

A. I can't remember saying that.

Q. You can't remember saying that to the FBI?

A. Yes, sir.

Q. Now what do you know about this car that was stolen out there, this white Cadillac automobile?

* * * * *

A. I was at the Bordeaux Pool Room, and Bobby Knight come by and picked me up in it, and we went riding and he told [2216] me it was a stolen car.

* * * * *

Q. All right. Now did you have any conversations there at the pool room with Self?

A. I didn't; he just told Bobby that——

Q. Did Self have any conversations with Bobby Knight?

A. Yes, sir.

Q. When you were present?

A. Yes, sir.

Q. What was that?

A. He told him he wanted to get rid of the car.

Q. Self told Knight that he, Knight, knew where to get rid of the car?

A. That he knew where to get rid of the car at.

Q. What did he say about whether it was his car?

A. He didn't say, he just told him, started to [2217] leave, said you know where to get rid of the car at.

* * * * *

[2218] * * * * *

Q. Now, Mr. Starks, earlier, before the Bordeaux bank robbery, did you get picked up down in Georgia?

A. Yes, sir.

Q. What was that for?

A. I was down there for burglary.

Q. All right. And when was that that you got picked up?

A. In the early part of April.

Q. Early part of April?

[2219] A. That's right.

Q. Who was down there with you?

A. Sammy Cole.

[2220–2230] * * * * *

[2231] BOBBY GALE KNIGHT, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Merritt:

* * * * *

Q. And you are nineteen years old now?

A. Yes, sir.

Q. Where are you located now, Mr. Knight?

A. State penitentiary.

Q. Have you been convicted of a felony?

A. Yes, sir.

[2232] Q. What is that?

A. Third degree burglary.

Q. Third degree burglary?

A. Yes, sir.

Q. Anything else?

A. Yes, sir.

Q. What?

A. Felonious use of an automobile.

Q. Felonious use of an automobile?

A. Yes.

Q. Is that this white Cadillac in this case we are talking about?

A. Yes, sir.

Q. All right. Now on October the 31st, 1967, were you in the Metropolitan jail?

A. I believe I was.

Q. All right, sir. Did you get a note from somebody while you were in jail?

A. No, sir.

Q. You didn't get a note from anybody while you were in jail?

A. No, sir.

Q. Well, did you call Georgia Ethridge?

A. Yes, sir.

Q. How did you—how did that come about?

[2233] A. Well, I was given a phone number?

Q. You were given the phone number?

A. Yes, sir.

Q. By whom?

A. Self.

Q. By Self?

A. Yes, sir.

Q. And what were you told by Self to do?

A. Call that number.

Q. And this was while you were both in jail?

A. Sir?

Q. This is while you were both in jail?

A. Yes, sir.

Q. Did he tell you who you would find on the other end?

A. No, sir.

Q. Well, did you call that phone number?

A. Yes, sir.

Q. Before calling that phone number, did you tell somebody else about it?

A. Yes, sir.

Q. Who was that?

A. The FBI.

Q. Do you remember that FBI agent's name?

A. Harvey or Herman or something.

[2234] Q. Hamar?

A. Yes, sir.

Q. Darrell Hamar?

A. Yes, sir.

Q. Was he there when you made your call?

A. Yes, sir.

Q. All right, who answered the phone?

A. Supposed to be Georgia.

Q. Georgia, and what did she say to you on the telephone?

Mr. Bateman. I object, Your Honor, to this. These people were all in jail, this is after the end——

Mr. Merritt. He told——

Mr. Wilson. When is this supposed to have occurred?

Mr. Merritt. October the 31st.

The Court. Let me see the statement.

* * * * *

[2235] Well, approach the bench then.

(Whereupon, the following conference was had at the bench between the Court and counsel for all parties out of the hearing of the jury:)

Mr. Merritt. She told him to say that they took the car to Parkview Hospital that night, and that's not true, that she told him to tell a lie. That's what I'm going to bring out.

* * * * *

[2236] * * * * *

[2237] * * * * *

Mr. Binkley. On page one, but here he says Georgia told him that Gary said to say so and so, and I don't see how he can identify——

Mr. Merritt. What?

Mr. **Binkley.** I don't see how he can identify who he was talking to on the telephone.

Mr. **Merritt.** If he can't, I'll agree with you, but if he can, it seems to me that it ought to come in. I agree with you, if he doesn't know who he was talking to on the telephone.

Mr. **Binkley.** It's more contamination.

* * * * *

[2238] * * * * *

Mr. **Merritt.** It's clear, like if you try to get somebody to tell a lie or destroy evidence.

The **Court.** There's no question about that. Let's get along. We've got to adjourn pretty soon.

(Whereupon, the following further proceedings were had in the hearing of the jury:)

The **Court.** All right.

By Mr. **Merritt**:

Q. Now back to where we were, Mr. Knight, you called this number that Dickie Self had given you in the presence of Mr. Hamar, is that correct?

A. Yes, sir.

Q. Was Mr. Hamar listening in on the telephone call, or was he just standing there?

A. Sitting there beside me.

Q. Sitting there beside you?

A. Yes, sir.

Q. And who did you talk to? Who answered the [2239] telephone, and how do you know who that was?

A. I don't know whether it was or not; it was supposed to have been Georgia.

Q. Was it a woman who answered the phone?

A. Yes, sir.

Q. How do you know who the woman was?

A. I don't.

Q. Well how do you know it was supposed to have been Georgia?

A. She just said she was.

Q. Said she was?

A. Yes.

Q. What did she say, my name is Georgia Ethridge?

A. Yes, sir, said this is Georgia.

Q. All right. Now what did she say to you on the telephone on October the 31st?

A. Nothing much, everything would turn out all right.

Q. What else did she say to you? Did she tell you what you were supposed to testify to in this trial?

A. No, sir.

Q. What did she say to you about that? Hadn't you given the FBI a statement about it, son?

A. About what?

Q. What she told you to say when you got up on the [2240] stand?

A. No, sir.

Q. Did she tell you anything to say?

A. No, sir, says just everything will turn out all right.

Mr. Merritt. I'm going to give you this statement and you read it and see if that refreshes your memory.

* * * * *

Q. Do you remember that?

A. Yes, sir.

Q. Now, Mr. Knight, what did she tell you to say?

A. Never did say nothing.

Q. Well, what are you saying, that this statement you gave the FBI is false?

A. Yes, sir.

Q. Is that what you are saying?

A. Yes, sir.

[2241] * * * * *

Q. I'll ask you——

Mr. Binkley. If Your Honor please, I'd like to object at this point, because this thing that we are getting into right here is not what this man has said, but what somebody says this man has said.

Mr. Merritt. Yes, sir, that's correct, the FBI.

The Court. He can be interrogated as to whether he made an oral statement to the FBI.

Are you taken by surprise by this testimony?

Mr. Merritt. Yes, sir. I asked him about it right before I came in the courtroom.

The Court. All right, go ahead, you can cross examine.

Any statements pertaining to any conversations [2242] on the part of Georgia Ethridge, any statements to that effect, if they are admitted into evidence at all, would be admissible only as to her, and not as to the other alleged conspirators.

Mr. **Merritt**. Also as to Self.

The **Court**. Well, the testimony so far as to Self is admissible, yes.

* * * * *

[2243] * * * * *

By Mr. **Merritt**:

Q. When the party answered the telephone, what did you say?

A. I said this is Bobby.

* * * * *

[2244] * * * * *

Q. And Special Agent Darrell Hamar was sitting beside you when you made this phone call, right?

A. Yes, sir.

Q. And did you advise Agent Hamar that after having told Georgia Ethridge that this is Bobby, Georgia told him that the FBI had interviewed his girl friend, and that the FBI had showed this girl friend a statement wherein Dickie Self had admitted the theft of the car, did she say that?

A. No, sir.

Q. Did you tell the FBI she said that?

A. No, sir.

* * * * *

Q. Now did she say, did Georgia tell you that, quote, "Gary said to say the car was left at Parkview Hospital", unquote?

A. No, sir.

* * * * *

Q. Did you tell the FBI that you assumed Georgia was talking about the white Cadillac automobile?

A. No, sir, she didn't mention no car.

Q. Did you tell the FBI that this vehicle had not [2245] been left at Parkview Hospital, but had been left at the County Hospital in Bordeaux?

A. I told them the car was left there, the Cadillac.

Q. You told them the white Cadillac was left there?

A. Yes, sir.

Q. Mr. Knight, not longer than an hour and a half or two hours ago, were you in my office?

A. Yes, sir.

Q. And we talked about this telephone call that you made to Georgia Ethridge, did we not?

A. Yes, sir.

Q. And we went over what statement you had made to the FBI about this, right?

A. Yes, sir.

Q. And you told me that that was the truth, did you not?

A. No, sir.

Q. You didn't. What did you tell me, that it was a lie?

A. Yes, sir.

Q. You told me that in my office?

A. Yes, sir.

Q. Son, don't you know you are lying about that?

A. No, sir.

Q. Why have you come up here on the stand after [2246] giving the FBI these statements and told a bald-faced lie? Why have you done that?

A. I didn't. They brought me up here.

Q. Has this man over here got you scared?

A. No, sir.

Q. Why are you lying to the jury about it?

A. I'm not.

Mr. Bateman. I object to that.

Mr. Wilson. I object to the reference of this man over here.

The Court. Overruled.

By Mr. Merritt:

Q. Are you saying that an hour and a half ago you told me this was a lie?

A. Yes, sir.

Q. Let me ask you this, did you make a phone call to Georgia Ethridge?

A. It was supposed to be her; I don't know whether it was.

Q. Did she say her name was Georgia?

A. Yes, sir.

Q. Was Special Agent Darrell Hamar sitting there?

A. Yes, sir.

Q. And you are telling me now that Georgia never told you what you were supposed to say when you got up on the [2247] witness stand?

A. No, sir.

Q. All right. But you told the FBI that's what you said?

A. Just tell them anything to get them off your back.

Q. You just said anything, but you didn't tell them that. Now are you saying that you did tell them that?

A. No, sir.

Q. Son, I would like for the Court to instruct you about the laws of perjury, because I believe you need the instruction.

Mr. Bateman. I object to that.

The Court. You realize that you are under oath, and that if you testify falsely, you can be prosecuted?

The Witness. Yes, sir.

By Mr. Merritt:

Q. Do you realize you can get five years in the penitentiary?

A. Yes, sir.

Mr. Wilson: I object to that as being threatening.

The Court. I think we have covered it sufficiently, as long as you are aware of the fact that he could be prosecuted.

[2248] * * * * *

By Mr. Merritt:

* * * * *

[2249] Q. Son, if you testify in this case, are you scared that something is going to happen to you out at the prison?

A. No, sir.

Q. Didn't you just get through telling me in my office not over an hour and a half ago that you were?

A. No, sir.

* * * * *

Q. All right. Now when was the first time you ever went out to Gary Ethridge's house?

A. I don't quite remember.

Q. What's that?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. When do you think it was?

A. About April sometime.

Q. Sometime in April?

A. Yes, sir.

Q. Was it before the Bordeaux Bank robbery?

A. Yes, sir.

Q. How long before?

A. About two or three days.

Q. Well, didn't you just get through telling me in [2250] my office that it was about a week or ten days before?

A. I think I was in jail.

Q. How long before was it?

A. Two or three days, about the 18th or 19th of April.

Q. While you were out there, was there any discussion between you and Gary about burglaries?

A. No, sir.

Q. No discussion about burglaries?

A. No, sir.

Q. Didn't you just get through telling me in my office not over an hour and a half ago that you discussed burglaries and that you went out and—were going to burglarize a place for him?

A. No, sir.

Q. You didn't tell me that you discussed that with Gary Ethridge?

A. No, sir, discussed it with Ferguson.

Q. What's that?

A. Discussed it with Ferguson.

* * * * *

[2251] A. No, sir, I got up here and swore to tell the truth.

Q. Why did you tell me a lie about it then?

A. Didn't tell you no lie.

Q. All right, sir.

Now I'll ask you about Wednesday, April the 19th, at Lee's Pizza House, did you have a conversation with somebody out there?

A. Yes, sir.

Q. Who was that?

A. Ferguson and Cole.

Q. Cole and Ferguson?

A. Yes, sir.

Q. What was the conversation about?

A. Just like to have a little money to leave town.

Q. Tell the ladies and gentlemen of the jury, describe the conversation from beginning to the end, what happened that night.

A. Well, me and Ferguson and Cole were sitting at a table and we ordered a pizza, and Ferguson said he never eat a pizza.

The Court. Was this in the presence of Cole?

The Witness. Sir?

The Court. Was Cole present?

The Witness. Yes, sir.

[2252] The Court. All right, overruled

By Mr. Merritt:

Q. Go ahead.

A. And Ferguson said he would like to have a little money to leave town, and Ferguson said, you know this pizza is pretty good, and we got up and left, and picked up Bostic, and took them to the projects and let them out, and that's the last I've seen of them.

Q. That's all that was said?

A. Yes, sir.

* * * * *

[2253–2256] * * * * *

[2257] November 29, 1967

(Twelfth day of trial)

(Whereupon, at 9:20 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

* * * * *

[2258–2264] * * * * *

[2265] * * * * *

Mr. Quillen. Further, if the Court please, we have done some research, Mr. Binkley has done most of it, with reference to this procedure that's being followed on surprise and cross examining these witnesses, and we would like to cite some authority to the Court.

The **Court**. Well, cite it and let's get along here.

Mr. **Binkley**. May it please the Court, the first case I would like to call to the Court's attention is the case of Young v. United States, and that is in 92 Federal Second.

The **Court**. What is it?

Mr. **Binkley**. Young v. United States. It's in 97 Federal Second at page 200, and this is a case which holds that if you are surprised by a witness, you have to first show that there is a surprise, and of course Your Honor is familiar with cases which say that the government attorney saying he's surprised is sufficient. We don't argue that.

The **Court**. The government has said that in each instance in this case.

Mr. **Binkley**. But the Young case holds that he next has to show that he's been harmed by the [2266] testimony, and it's not enough just to show that it's not the expected testimony, and the Young case says that impeachment can never be used just to get in statements that you wanted the witness to say.

The **Court**. Well, that's true.

Mr. **Binkley**. We submit that that's what has been happening here, and——

The **Court**. I don't agree with you. The witness just as she came in the door told the FBI agent that what she had told him in her written statement was true, and then the government put that witness on the stand.

In the other instance, the United States Attorney has represented that the witness has just told him in his own office that the statement was true.

Under those circumstances, why wouldn't the government have good faith right to put those witnesses on the stand and expect them to say what they had previously stated?

Mr. **Binkley**. Well, I think——

The **Court**. It seems to me it would be absurd to hold under those circumstances that the government couldn't put the witness on the stand.

Mr. **Binkley**. Well, for the government to put the witness on the stand, if Your Honor please, and [2267] have a witness who apparently is refusing to testify to what the government wants them to testify to——

The **Court**. What they previously have said.

Mr. **Binkley**. But then to bring in an unsworn statement and say, didn't you say thus and so, and just go through the unsworn statement, is the government getting inadmissible proof before the jury to prove the substantive case?

The **Court**. That would be true except for the fact that I told the jury that that was not substantive evidence, and was not to be used for that purpose.

Mr. **Binkley**. I didn't understand—I understood Your Honor to say that they would have to determine whether this evidence was true or not.

The **Court**. I did not say that. I said if the witness, when cross examined, agreed that the prior statement was correct—and one witness did in certain instances, in part, said that her prior statements were true—that then that would be substantive evidence, but would have to be weighed by the jury to determine whether it was true or untrue.

Mr. **Binkley**. Yes, sir.

The **Court**. To the extent that the witness repudiates the prior statement, there is no substantive evidence.

[2268] Mr. **Binkley**. Maybe I just misunderstood Your Honor, but I felt, wanted to state this morning that I feel we are entitled that the jury be instructed that these FBI statements and other things are to be considered only for purposes of impeachment.

The **Court**. Well, I don't know that that's a correct statement. They certainly are to be—there are many statements in the cases that that's the only purpose for which they are to be used, but there seems to me there are two other purposes. One would be first to refresh the witness' recollection.

Mr. **Binkley**. Yes, sir.

The **Court**. Next would be to be used by the government to cross examine the witness in an effort to have the witness agree with the prior statement rather than to testify as the witness is testifying on the stand.

Mr. **Binkley**. Yes, sir.

The **Court**. In other words, after probing the witness and confronting the witness with this prior statement, the witness may change his mind and say, yes, this prior statement is correct, and what I'm saying now is wrong.

Mr. **Binkley**. Yes, sir.

The COURT. So there are really three purposes [2269] for which this statement may be used.

Mr. BINKLEY. But there is always the danger and I would like to call the Court's attention to the case of Bridges v. Whitson.

The COURT. I'm familiar with that case. It's a deportation case.

Mr. BINKLEY. Yes, sir, but in this case, they spoke of the statements which the defendant had alleged—or the witness had allegedly made were hearsay, and the Court said, we may assume that they would be admissible for purposes of impeachment, but they would certainly not be admissible in any criminal case as substantive evidence.

The COURT. That's right. I have, in effect, told the jury about that already, but to be sure about that, I may give the jury additional instructions on it.

* * * * *

[2270–2272] * * * * *

[2273] * * * * *

Mr. BINKLEY. May it please the Court, just one other matter. I've just spoke to Mr. Knight, and he advises me he has one witness who is going to testify that Mr. Bostic was confined in the penitentiary or at least was in custody at the hospital and escaped from the hospital, and I believe from what Mr. Knight says, if I quote you correctly, he feels it's [2274] necessary for the government's case to prove that this man used aliases and other things to avoid capture, and I would like to say that I object to this line of questioning because I don't see how it shows anything connected with the conspiracy, and that this, even though it may not be with design, will certainly prejudice the minds of the jury to show that my client was in the penitentiary, and I object to this testimony.

I'd like to voice my objection now so I won't have to do it——

The COURT: If the facts are the facts, I don't see how we can avoid them.

Mr. BINKLEY. I think they need to be relevant fact.

The COURT. If it's tied in the fact that he was an escapee and they were trying to keep him concealed so he would not be apprehended and picked up so the conspiracy could proceed, that's the testimony of Leeman, it seems like it's very relevant.

Mr. **Binkley**. Leeman is an accomplice and there's no corroboration.

The **Court**. Certainly he's an accomplice, but I'm not saying there's no corroboration. There may be some.

Mr. **Quillen**. There's one additional case I [2275] wanted to cite in connection with the proper procedure is Hooks v. United States,

The **Court**. What does it hold that we are not doing here?

Mr. **Quillen**. It's citing the Young case.

The **Court**. What do you think we ought to do?

Mr. **Quillen**. This is what is suggested here is the better practice. It points out that the best practice that the party which has shown surprise be permitted to withdraw the witness and the testimony. I think that's what should be done.

The **Court**. The better practice is to do what now?

Mr. **Quillen**. The party that is shown surprise be permitted to withdraw the witness, and the testimony. That's a 5th Circuit case decided March 30, 1967.

The **Court**. I'm not surprised at the 5th Circuit.

* * * * *

[2276] * * * * *

The **Court**. That couldn't be sound practice.

* * * * *

[2277] * * * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

The **Court**. Ladies and gentlemen of the jury, I instructed you along this line yesterday, but in order that there will be no mistake about it, I will undertake at this time to advise you about the use of prior statements that may have been made by a witness who takes the stand and then repudiates that prior statement either in whole or in part, under certain circumstances such as where the government is taken by surprise by the testimony of the witness, and the witness has given a prior statement, written statement or an oral statement for that matter, it is permissible for the government to be permitted to cross examine the witness on the basis of that prior statement by using the prior statement for that purpose.

Such prior statements under those circumstances do not constitute affirmative evidence or rather do not constitute substantive evidence, and they are not to be looked to by the jury for that purpose.

If a witness, upon being so cross examined by [2278] the government, accepts the prior statement or any part of it and says, yes, that is true, after being cross examined, to the extent that that is done, why then that would constitute substantive evidence.

You, however, would be the sole and exclusive judges of the credibility of that statement whether it is to be accepted or not accepted in the light of the entire record in the case.

The prior statement may be used by the government for the purpose of impeachment, contradicting the witness. Prior statements of this kind may also be used, under certain circumstances, if necessary, to refresh the recollection of the witness. For those purposes, the prior statement may be used. But per se and as such, the prior statement to the extent that it is not approved or adopted or accepted by the witness when under oath on the witness stand, does not constitute substantive proof or evidence in the case, and you will keep these considerations, these principles in mind at all times when considering any testimony of this kind or the use of such prior statements.

All right, proceed.

DIRECT EXAMINATION (Continued)

[2279] BOBBY GALE KNIGHT (Resumed) * * *

By Mr. MERRITT:

Q. Mr. Knight, I don't want to belabor this point, but I would like to get established for the record, as a result of receiving a message from Dickie Self while the two of you were in jail, did you call Georgia Ethridge in the presence of Special Agent of the FBI, Darrell Hamar?

A. Yes, sir.

Q. Did she say to you, Gary said to say the car was left at Parkview Hospital?

A. No, sir.

Q. Did she say anything similar to that?

A. No, sir.

Q. Did you tell Special Agent Darrell Hamar on November 2nd, 1967, on or about that date, that this is what Georgia Ethridge stated to you over the telephone?

A. No, sir.

Q. You did not tell him that?

A. No, sir.

Q. Do you recall there being another FBI agent present at that time?

[2280] A. Yes, sir.

* * * * *

Q. And that other man was present when the phone call was made by you?

A. Yes, sir.

Q. And he heard whatever statements, along with Darrell Hamar, whatever statements you may have made after that conversation?

A. Yes, sir.

Q. And you say that you did not tell Darrell Hamar that Georgia Ethridge said Gary said to say the car was left at Parkview Hospital?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. I'll ask you if you said that to me yesterday in my office?

[2281] A. No, sir.

Q. You are testifying that you did not say that to me?

A. Yes, sir.

Q. I'll ask you in this connection if you did not say to me yesterday that if you testified against Ethridge today, you would be dead tomorrow?

A. No, sir.

Q. Are you saying you did not say that to me?

A. Yes, sir.

Q. In my office yesterday?

A. Yes, sir.

Q. Are you saying also, do you deny that as a result of your saying that, I offered to help you get moved from where you are to a safer place?

A. No, sir.

Q. You deny that also?

A. Yes, sir.

Q. Now the next question is concerning the theft of the white Cadillac automobile. Would you tell the jury, please, what you know about that?

A. I was charged with felonious use of it.

Q. All right, sir. What did you have to do with that car?

A. Riding in it.

[2282] Q. Didn't you and Dickie Self steal the car?

A. (No answer.)

Q. Are you going to deny that?

A. Yes, sir.

Q. You deny that in April you and Dickie Self stole a white Cadillac automobile?

A. Yes, sir.

Q. Out of the garage of Mr. Albert Werthan?

A. Yes, sir.

Q. Do you deny that on that evening you and Dickie Self, I believe a fellow named Whitaker and a couple of girls were driving through Percy Warner Park, do you deny that?

A. No, sir.

Q. All right, sir. Do you deny that the car in which those people were riding was involved in a wreck up there at the turn that first turn in Percy Warner Park?

A. Yes, sir.

Q. You deny that?

A. Yes, sir.

Q. Do you deny that you just told me that in my office yesterday?

A. Yes, sir.

Q. Exactly where the turn was?

A. Yes, sir.

Q. You deny that?

[2283] A. Yes, sir.

Q. All right. Do you deny that the automobile was in a wreck, am I correct in that?

A. No, sir, it was in a wreck.

Q. It was in a wreck?

A. Yes, sir.

Q. Where was it in the park?

A. It wasn't in no first turn.

Q. Where was it then?

A. As you come out of the park.

Q. Well, you told me yesterday up there at that turn, did you not?

A. There's a lot of turns, it wasn't no first one.

Q. All right. Now what happened after you had a wreck in the car? Did you drive it off?

A. No, sir.

Q. What happened then?

A. Went and got a wrecker.

Q. Went and got a wrecker?

A. Yes, sir.

Q. And how did you get home?

A. In a car.

Q. Whose car?

A. I don't know whose car it was.

Q. You don't know whose it was?

[2284] A. No.

Q. What did it look like?

A. White Cadillac.

Q. I see. And who went and got the white Cadillac?

A. I don't know; I was hitchhiking.

Q. You were hitchhiking?

A. Yes, sir.

Q. Who was driving it?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. You don't remember who was driving the car at all?

A. No, sir.

Q. Didn't you tell me yesterday—you are saying that—your testimony now is that you and Dickie Self did not go down and steal this white Cadillac?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Well, in this same statement that you gave to the Federal Bureau of Investigation on November 2nd, 1967, these same two agents, I will ask you if you did not say as follows, you advised these agents that during April, 1967, Dickie Self, that you, Dickie Self, Howard Whitaker, Peggy [2285] May, and Leslie Belcher had been riding around in Knight's automobile, is that correct, did you advise them that, is that true?

A. Yes, sir.

Q. You stated that on the evening they had wrecked his Studebaker automobile, you stated that on that evening they had wrecked his, your, Studebaker automobile, so he and Dickie Self left the other three individuals at this car and they started walking from that location. Did you tell them that?

A. Yes, sir.

Q. He stated that he would estimate they walked approximately one-half mile, and had walked across a golf course when they approached a residence and they noted a white Cadillac automobile parked in a garage at that residence. Did you tell them that?

A. No, sir.

Q. Didn't tell them that?

A. No, sir.

Q. You did not say that to Special Agents Hamar and Ratkowski?

A. Yes, sir.

Q. You did not?

A. Yes, sir.

Q. Well, did you or didn't you?

A. I didn't.

[2286] Q. You did not?

A. No, sir.

Q. Is it your statement that I just read to you now, you did not make——

A. I made some of it.

Q. The last, I'll read it to you again.

"He stated that he would estimate they walked approximately one-half mile, and had walked across a golf course when they approached a residence and they noted a white Cadillac automobile parked in a garage at that residence."

Did you make that statement to the FBI?

A. I said I walked about a half a mile to the road.

Q. Well, did you make the part of the statement that says: "And they noted a white Cadillac automobile parked in a garage at that residence."

A. No, sir.

Q. Did not make that statement?

A. No, sir.

Q. And you are now denying that that statement is true?

A. Yes, sir.

Q. Okay. Next sentence.

"He stated that they looked inside this car and [2287] noted that the key was in the ignition switch so he and Dickie Self got into this car and drove it from that location."

Did you make that statement?

A. No, sir.

Q. Did not say that to Special Agents Hamar and Ratkowski? Is that correct, you did not say that?

A. Yes, sir.

Q. All right. Going further.

"He stated they drove in the direction from which they had walked, and there picked up the other three individuals and stated they then took Peggy May and Leslie Belcher to their residences, and then took Howard Whitaker to downtown Bordeaux and let him out."

Did you make that statement?

A. No, sir.

* * * * *

Q. "He stated from there they drove to Lee's Pizza Place—"

Mr. Bateman. Now, Your Honor, I'm going to object to this. This witness has disclaimed this statement from the point where it refers to the automobile. He says he did not make this statement. There can be no further purpose in reading the rest of this [2288] before the jury.

Mr. Merritt. He might change his mind.

The Court. You may cross examine. There have been parts of it that he has agreed with. He was in the white Cadillac. He had admitted that part of it.

Mr. Quillen. May we approach the bench?

The Court. And I think he may cross examine the witness to see if he will admit other parts of it.

Mr. Bateman. It's repetitious; he's asked him four times, and he has denied making the statement or stealing the car.

The Court. He is reading for the purpose of asking the witness if they made this prior statement, How else can he get it before the witness?

Mr. **Bateman**. If the witness denies they took the car, there is no purpose.

The **Court**. Hasn't he admitted that he was in the automobile?

Mr. **Bateman**. I understood him to say that he was hitchhiking and somebody whose name he didn't know in a white Cadillac picked him up.

The **Court**. He admitted that he was with Self in the car at one time, am I correct in this?

The **Witness**. Yes, sir.

The **Court**. He's admitted one part of it.

[2289] Mr. **Bateman**. There's a lot of difference in that and what the prosecutor——

The **Court**. Maybe he will admit other parts and maybe he wont. I don't know. And that's the only reason I'm permitting this, and the jury will keep that in mind, that it is not substantive proof unless the witness does admit that some part of the prior statement is true or to the extent that he admits the prior statement is true.

Mr. **Quillen**: May it please the Court, a matter just came to my attention that I would like to approach the bench briefly about.

The **Court**. Well, all right.

(Whereupon, the following conference was had at the bench between the Court and counsel for all parties out of the hearing of the jury:)

Mr. **Quillen**. If the Court please. Mr. Knight just stated that the purpose of this examination was to lay the foundation for a perjury case against this kid, and I frankly——

The **Court**. He stated it to whom?

Mr. **Quillen**. He stated it to me.

Mr. **Knight**. That's not the result of any conversation.

[2290] Mr. **Merritt**. I state to the Court, the reason I'm going over this as thoroughly as I am is that is what my thinking is.

The **Court**. If that's not the only purpose——

Mr. **Merritt**. That's not my only purpose, oh, no, but when a man gets up on the stand and does this, you begin to wonder about whether you are going—if you don't have some obligation.

The Court. That would be something you would have to decide later, but for the purpose of this trial, it would have to be pursued on the theory that you were going to get him to admit in whole or in part——

Mr. Merritt. Yes, sir.

The Court (continuing). That statement.

Mr. Merritt. But when he doesn't do that, I am certainly entitled to have it tied down, the testimony tied down in such a way that it could be used, if necessary.

I hope the witness will tell the truth about what he's told in the grand jury, what he's told me in my office, I hope that's what he will say. I don't want to prosecute the boy for perjury.

Mr. Quillen. That being the situation, he's obviously a kid, and I didn't feel right——

The Court. If a person comes here and doesn't [2291] testify truthfully, I think he's entitled to be cross examined. That's basic.

Mr. Quillen. I just thought——

The Court. He has given how many prior statements?

Mr. Quillen. Three that I know about.

Mr. Merritt. And the grand jury.

Mr. Quillen. They are inconsistent.

The Court. He's already, as I told you, admitted part of them, he may admit other parts.

Mr. Quillen. All right.

(Whereupon, the following proceedings were had in the hearing of the jury:)

The Court. Go ahead now, let's proceed and get through with this witness.

By Mr. Merritt:

Q. All right, my next question is, did you drive in that Cadillac automobile to Lee's Pizza Parlor located on Clarksville Highway where Dickie Self picked up Self's Comet automobile?

A. Yes, sir.

Q. You did that?

A. I didn't drive it; some guy took us there; I don't know who he was.

Q. Now tell the jury what you want to tell them about that. You stated here that they drove to Lee's Pizza [2292] Parlor located on Clarksville Highway where Dickie Self picked up Self's Comet automobile, is that right or wrong?

A. Some man drove us there and Self got out and got in this car.

Q. Okay. Did you then drive the Cadillac automobile to the County Hospital in Bordeaux?

A. No, sir.

Q. Well, I'll ask you if you stated to the FBI that from there, meaning Lee's Pizza Parlor, you drove the Cadillac automobile, to the County Hospital in Bordeaux and that Dickie Self followed you in Self's Comet. Did you state that to the FBI?

A. No, sir.

Q. Did you state to the FBI that the County Hospital is located at the end of the County Hospital Road?

A. No, sir.

Q. Did you state to the FBI that the white Cadillac automobile was left at that location, that is the County Hospital, and that you did not observe this vehicle again until approximately two to three days following the robbery of the Commerce Union Bank at Bordeaux?

A. No, sir.

Q. Did you state that?

A. I was in the car three days after the bank was robbed, that's what they say.

[2293] Q. Did you state to the FBI that you left the white Cadillac automobile at the County Hospital?

A. No, sir.

Q. All right. And you deny that you made the same statement to me in my office yesterday morning before you testified?

A. Yes, sir.

Q. Did Ethridge make an effort to recruit you into this gang?

A. No, sir.

Q. Do you deny that you told me that in my office yesterday? Let me quote the exact words.

Do you deny that you said to me yesterday that Ethridge said to you, "I understand you are pretty slick and I could use you"?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. I'll ask you if you told me yesterday—well, I'll ask you first if you and Ferguson pulled a burglary that Ethridge had set up?

A. No, sir.

Q. I'll ask you if you didn't tell me that [2294] yesterday?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. I'll ask you if when you got caught on an attempted burglary back last April, I believe it was just before the Bordeaux Bank, if Ethridge didn't provide the money for your bond?

A. No, sir.

Q. I'll ask you if you told me that yesterday?

A. I borrowed it from him.

Q. You admit that you got some money from Ethridge?

A. I borrowed it and paid him back.

Q. You borrowed it, is that your testimony?

A. Yes, sir.

Q. So you do admit that you told me that yesterday, that you got some money from him at any rate?

A. Yes, sir.

Q. Now do you know James Herman Bostic?

A. No, sir.

Q. Ever seen him before?

A. Yes, sir.

Q. Where?

A. Hensley Apartments.

Q. And in an automobile?

[2295] A. Yes, sir.

Q. And did you have any conversation with him? Who else was present at that time in the automobile?

A. Cole, Ferguson, Bostic and I.

Q. Cole, Ferguson, Bostic and you?

A. Yes, sir.

Q. And when was this that you saw Bostic?

A. I don't remember the date.

Q. Well, was it before the Bordeaux Bank robbery?

A. I don't know; I don't remember.

Q. Well, I'll refresh your recollection, if possible. Do you remember being—testifying before the grand jury here?

A. Yes, sir.

Q. Do you remember being asked by Mr. Knight about the question, do you know James Bostic, and your answer was, I've seen him once?

A. Yes, sir.

Q. And then you testified that you saw him in the back seat of an automobile as you have testified here, the same thing, with Sammy Cole, Larry Ferguson, and Bostic, and then the question was asked to you, "When was that?" And your answer, "Before the bank robbery." Do you remember that?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

[2296] Q. Then Mr. Knight asked you, how long before, and your answer, "About three days, three or four days."

Do you remember that?

Mr. Wilson. I'm going to object to any further reading of this grand jury proof for the purpose of—for any purpose, as directly reading it, because it takes the nature of substantive proof.

The Court. How, as a matter of mechanics, how does the cross examining attorney get the prior statement before the witness to see whether or not the witness agrees with it, or disagrees with it?

Mr. Wilson. I think, if Your Honor please——

The Court. If you have some reasonable suggestion to make, I'll be glad to consider it.

Mr. Wilson. The only way I could say that he could ask him, not reading the question and answer.

The Court. I thought I instructed him to do that.

Mr. Merritt. I just got through asking the boy when it was, and he said he couldn't recall, and I got the grand jury testimony out to read it to him to refresh his memory, and he says, that's right, that's what I said, I remember, that's right.

The Court. That part of it, I think, is all right; to the extent that the lawyer may appear to be [2297] reading the transcript, ladies and gentlemen of the jury, I repeat what I've said heretofore, that what is in that prior statement is not per se, in and of itself, substantive proof in this case, and that it would depend upon the witness himself accepting the statement as correct and testifying to it today to constitute substantive proof, and it may be used to refresh the witness' recollection.

Mr. MERRITT. Or to impeach him.

The COURT. Or for purposes of impeachment also, if they are inconsistent.

By Mr. MERRITT:

Q. All right. Now is it correct that this one time you saw Bostic was three or four days before the Bordeaux Bank robbery?

A. I believe it was, sir.

Q. All right. What kind of automobile were you in when you saw him?

A. Mustang.

Q. What color?

A. Red and white.

Q. And whose car was it?

A. Supposed to be Ethridge's.

Q. Gary Ethridge's?

A. Yes, sir.

[2298] Q. Now what was said on that occasion by Ferguson and Bostic?

A. Wasn't nothing much said.

Q. What was said about money by Ferguson and Bostic?

A. Said they would like to have some money so he could leave town.

Q. You are talking about Bostic?

A. Ferguson.

Q. What about Bostic?

A. He never did say nothing.

Q. Well now, you're sure of that? I don't know whether you want to tell it right or wrong, are you going to testify that Bostic didn't say anything to you?

A. Yes, sir.

Q. Well, do you recall that in response to a question that Mr. Knight asked you, you gave this reply:

"Bostic said he had escaped from the pen, and needed some money to leave town on."

A. No, sir.

Q. You deny that?

A. Yes, sir, a little mixed up there.

Q. What?

A. A little mixed up, Ferguson said that.

Q. Well, this grand jury testimony says—it's [2299] right here what you said, what they took down, answer:

"Bostic said he had escaped from the pen and needed some money to leave town on."

A. No.

Q. All right, you say that's not right?

A. Yes, sir.

Q. Okay, what did Ferguson say?

A. Ferguson said he knowed this boy that needed some money so he can get out of town, said he escaped from the pen.

Q. Ferguson said that?

A. Yes, sir.

Mr. Merritt. All right, I believe that's all. Would you indulge me just a moment, may it please the Court?

That's all.

CROSS EXAMINATION

By Mr. Wilson:

Q. Mr. Knight, this is the first time I've ever seen you or talked to you, is that correct?

A. Yes, sir.

Q. Do you recall how many times that Mr. Rodgers or Mr. Hamar or these other FBI agents came to see you?

A. No, there was a lot of them.

[2300–2307] * * * * *

[2308] * * * * *

REDIRECT EXAMINATION

By Mr. Merritt:

* * * * *

[2309] Q. Would you tell me anything to get off your back?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. Do you think I was impolite to you in there, mad at you, yelling at you?

A. No, sir.

Q. In my office, we just had a conversation back and forth, didn't we?

A. Yes, sir.

[2310-2376]

[2377] MAXIE VERNON CARNEY, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Merritt:

[2378]

Q. I see. Now do you know the defendant Eugene Beard, William Eugene Beard?

A. Yes, sir.

Q. How long have you known him?

A. Oh, approximately a year.

Q. How long?

A. About a year.

Q. About a year?

A. Yes, sir.

Q. Do you know any of the other defendants in this case?

A. No, sir.

Q. In what connection did you get to know Eugene Beard?

A. He worked with me.

Q. He worked with you?

A. Yes.

Q. Worked for you?

A. Yes.

[2379]

Q. Now I'll ask you to state whether or not Eugene—you had a conversation with Eugene Beard with reference to an alibi for bank robbery?

Mr. Quillen. Objection.

Mr. Lowery. Except to the leading of that.

By Mr. Merritt:

Q. Well, have you had any conversation with his about any bank robbery where you were supposed to do something for him?

A. Yes, sir.

Mr. Quillen. We object to him following up after stating the leading question.

The Court. Overruled.

By Mr. Merritt:

[2380] Q. Yes, sir. Is your answer, yes, sir?

A. That's right.

Q. All right. State for the jury approximately when that conversation took place.

A. That was in about the last part of June or the first part of July.

Q. The last part of June or the first part of July?

A. Yes, sir.

Q. Was he working for you at that time?

A. Yes, sir.

Q. And did you all have a job somewhere? Did you have a job somewhere?

A. We was working up in Clarksville.

* * * * *

[2381] Q. I see. Now state for the jury what this conversation, state in as much detail as you can what this conversation was about a bank robbery.

A. Well, just wanting to have an alibi that he was working with me.

Q. How did he want to go about setting that alibi up?

A. Well, we just talked about it, him going to work with me, and coming back and if he did something, he could come—go back to Clarksville and meet me, you know, work with me.

Q. Well, was there something said about starting out in the morning—how did that——

A. Well, we talked about it. Said let somebody know that he was with me to be seen, you know, at a restaurant or something.

Q. How did he suggest that you go about—was this supposed to be in the morning?

A. Yes, sir.

Q. And how—did he suggest some way about how you were supposed to let people know that he was with you? How was that to be done?

A. Well, that we go in a service station to get gas or stop in a restaurant where we had stopped before.

Q. And then what would happen?

A. Then he could come back and do what he wanted to [2382] and then come on up there and meet me see and finish the day, and that way he would be with me.

Q. That way he would be with you, in other words get out of the car on the way up there?

A. Yes, sir, come back up there in another car, get somebody to bring him and go with me and work the rest of the day.

Q. Did he say anything about how he was going to get up there in another car?

A. Well, he mentioned he could get—you know, a real fast car, driving fast.

Q. And then come up there after the bank robbery and meet you and work the rest of the day?

A. Yes, sir.

* * * * *

[2383]

Q. All right. Now do you recall approximately when James Larry Ferguson was killed?

A. Yes, sir.

Q. When was that?

A. It's been about a month ago.

Q. Sometime in September?

A. Yes, sir.

Q. Do you remember or did you have a conversation with Beard about Ferguson about a month before that?

A. Yes, sir.

Q. Where did that conversation take place?

A. Out in front of his house.

* * * * *

[2384]

Q. All right. What came up about that? Just explain it to the jury.

A. Well, he just—was wanting to borrow my gun, and—well, he said he needed—he was going to testify against him.

Q. Said who was going to testify against him?

A. Ferguson boy.

Q. Did he tell you how he knew that Ferguson was going to testify against him?

A. He just said he knew something on him. He said he was going to testify against him, said he had already told him he was on account of they had had some trouble.

* * * * * *

[2385]

Q. Speak up a little.

A. They had had an argument, they used to be friends and during that argument or fight, Ferguson had stated he was going to cause him a lot of trouble by telling everything he knew on him.

Q. So what did he say to you about that?

A. Well, he was—I didn't take him too serious, but he was talking about he had to get rid of him, he couldn't afford for him to go to Court on him.

Q. Was he looking for some advice from you?

A. Maybe, I don't know.

Q. Well, after he said that Ferguson had said he was going to testify against him, did he—was anything said with reference to a rifle?

A. Yes, sir, one time about a 30-30 rifle, he just wanted to borrow——

Q. Whose rifle, was that at the same time this same conversation that you are talking about when the 30-30 rifle came up?

A. Yes, sir.

Q. Whose rifle are we talking about now, this 30-30?

A. Mine.

[2386] Q. What did he say to you about that?

A. He just wanted to know if he could borrow it sometime when he needed it.

Q: Was his—did his need for it, did he say anything about whether his need for it had anything to do with Larry Ferguson?

Mr. QUILLEN. Objection.

Mr. LOWERY. We except to that question. If he's going to testify, there's no need to cross examine him.

The COURT. Sustained.

* * * * *

Q. And who was he—who, if anyone, was he talking about hitting at a long distance?

A. Well, it would have been the Ferguson boy.

Q. All right, did you let him have your rifle?

[2387] A. No, sir.

Q. What did you tell him?

A. I told him that rifle was registered to me, I couldn't let him have no rifle.

Q. Did you say anything to him about killing Ferguson?

A. Well, the only thing I had to say was he better get him to not testify against him or cause him trouble some other way, there's got to be another way besides killing a guy, and that's all I had to say about it.

Q. And that's what you told him, is that right?

A. Yes, sir, it was.

Q. Now did you have any conversation with Eugene Beard about the Bordeaux bank robbery?

A. Yes, sir.

Q. What was the substance of that conversation?

A. Well, he said that there was thirty thousand dollars, you know, taken in the robbery.

Q. Said there was thirty thousand dollars taken?

A. He didn't say he was in the robbery though.

Q. Yes, sir, anything else said?

A. I told him that was a lot of money, and he said, well, it wasn't if you split it six ways, five ways.

* * * * *

[2388] * * * * *

Q. Will you repeat what you said?

Mr. QUILLEN. That would be repetitious.

The COURT. It might be, but he's not speaking very loudly, but go ahead and repeat the answer.

The WITNESS. Said thirty thousand dollars was not a lot of money if split five ways.

The COURT. Are you contending that this statement attributed to Beard was in execution of the conspiracy?

Mr. **Merritt**. I'm contending that Beard's statements are in furtherance of the conspiracy, trying to recruit the fellow in the conspiracy, provide an alibi, provide a gun.

The **Court**. I'm not questioning that statement, but this precise statement about this thirty thousand dollars, splitting it five ways; how could that be in execution of the conspiracy to tell this man about it?

Mr. **Merritt**. Here was a man he was cultivating to bring into the conspiracy, plus the fact that this particular statement is not—I'm not going to ask him [2389] anything further about this particular statement. He just said Beard just said thirty thousand dollars——

The **Court**. I understand, but I want the jury to be properly instructed if this is not in execution of the conspiracy. I'm not questioning the prior testimony he's given, and that's not what I'm directing my attention to, but this particular conversation.

* * * * *

The **Court**. Well, I'll admit this for the present, ladies and gentlemen of the jury, this particular statement now attributed to Beard by this witness in regard to the—what bank was it, Commerce Union?

Mr. **Merritt**. Yes, sir.

The **Court**. Commerce Union Bank, involving an [2390] alleged amount of thirty thousand dollars approximately, that was to be divided five or six ways, whatever his testimony was, that will be considered by you only with respect to the defendant Beard and not as to the other defendants involved.

Now this limiting instruction does not apply to the other testimony that this witness has given. I'm not limiting your consideration of his other testimony in that same way.

By Mr. **Merritt**:

* * * * *

[2391–2392] * * * * *

[2393] * * * * *

Q. Now, did you have any conversation with Eugene Beard about the Third National Bank robbery?

A. We discussed it, because it had been robbed recently.

Q. All right. What did he say to you about that robbery?

A. He said that was the way that a bank should be robbed, they just played it cool, just walk in and be firm with them, and said something about you know just cut the camera wire and do it and get it over with in a hurry, but he didn't say he had anything to do with it.

Q. All right, did he say thing to you with [2394] reference to any money that he may or may not have gotten from the bank, that bank robbery?

Mr. Lowery. Except to the leading and the form of that question, if the Court please.

The Court. Did he say anything—slightly leading; you might rephrase it.

By Mr. Merritt:

Q. Did he say anything to you about any money in that connection?

A. Well, he ended up with twelve hundred dollars.

Mr. Quillen. We object to that, that's a conclusion.

The Witness. Most of the money was turned green.

The Court. Is he stating that as what he said?

The Witness. Yes, sir, that's what he said. He said that the money was ruined because there was a——

By Mr. Merritt:

Q. Let me ask you this first. How much money did he tell you he got out of it?

A. Twelve hundred dollars.

Q. Now what is this about the money being green?

A. Said there was a pill in the sack the money was in and it went off and ruined the money.

The Court. Said what? I didn't understand you.

[2395] The Witness. Ruined the money.

The Court. What went off?

The Witness. Something.

Mr. Merritt. He said a pill.

By Mr. Merritt:

Q. What do you mean by a pill?

A. I don't know, a bomb, I guess, in the money.

Q. A bomb went off and what did he say about that?

A. It turned the money green.

Q. You mean the money from the bank robbery?

A. Turned the most of it green.

Q. Did he tell you how much good money was left?

A. About two thousand dollars. He was just wanting to know how to clean the money, how to get the green off of it.

Q. He was asking you about that?

A. Yes, sir.

Q. What did he ask you about that? What was that conversation?

A. He just asked me if I knew, said he didn't know how, he had tried everything.

Q. What did you tell him?

A. I didn't know either. I told him there ought to be some way, but I didn't know how to do it.

The COURT. Now these statements about the fact that he got the money, pertaining to the money he got [2396] from this alleged robbery will be subject to the same limitation I stated a moment ago, applicable to the defendant Beard only.

All right, go ahead.

By Mr. MERRITT:

Q. All right. What else, if anything, was said about the money—was anything said about what happened to the money?

A. Said the money was in the river, he didn't know where it was, but somebody else did in case, you know, he could find out how to clean the money off, he could get it.

* * * * *

Q. Now did you ever have a conversation with him about Gary Ethridge?

A. Yes, sir.

Mr. WILSON. I'm going to object, if Your Honor please, that this wasn't part of the conspiracy, alleged conspiracy. You've got to first lay a predicate to find out when it was.

The COURT. I'll have to see before I can rule [2397] on it.

* * * * *

By Mr. MERRITT:

Q. When was the conversation, approximately when was the conversation that you had with him about Ethridge, about Gary?

A. I guess it was about three or four months ago.

Q. Three or four months ago?

A. It was while he owned a pizza place on Clarksville Highway.

Q. Three or four months ago was that conversation?

A. Yes, sir.

Q. And do you recall where the conversation took place?

A. Well, when we drove down the street past the place.

Mr. **Wilson**. I'm going to object to it being hearsay if he can't show it's in furtherance of the conspiracy.

Mr. **Merritt**. I'm going to show that.

The **Court**. That's what I've been telling the jury, these instructions.

[2398] * * * * *

By Mr. **Merritt**:

Q. What conversation did you have about Gary, the owner of the pizza parlor?

The **Court**. Are you insisting, I'm sure you anticipate his answer, that this is a conversation that pertained to the alleged conspiracy, and the execution of it?

Mr. **Wilson**. I want the Attorney General to understand that Beard is not charged with the robbery of the Commerce Union Bank, the Broadway branch of it.

The **Court**. I understand.

Mr. **Merritt**. That doesn't have anything to do with the Bordeaux branch.

The **Court**. No.

Well, step up here so I can see.

(Whereupon, a conference was held at the bench between the Court and counsel for the respective parties out of the hearing of the jury as follows:)

Mr. **Merritt**. I would be glad to blurt it out, but I don't want to be unfair about it.

* * * * *

[2399] * * * * *

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

The **Court**. All right, proceed.

Mr. **Merritt**. Now the statement, the conversation, may it please the Court, goes to the relationship that existed between Beard and Ethridge. The conversation was substantially as follows.

Beard said—well, Beard said to him that Gary Ethridge, the owner of the Lee's Pizza on Clarksville Highway, had furnished

Beard bond money over a month ago. Beard related that he, Beard, was not required to pay the money back, and his reply was that this—his reply being this man's reply was that this Gary must be an awful nice fellow, and Beard said that Gary had to pay the bonds as he was tied in too closely to the bank robberies, and Gary could not risk Beard talking.

Beard also said that Gary is the money man.

Now we take this in connection, may it please the Court, with the conspiracy charged in the indictment [2400] which includes the killing of Ferguson as well as the bank robberies. We have—I think there's been a foundation. I think the foundation for Beard being a part of that conspiracy has been pretty clearly laid.

Now that being the case, Beard, a conspirator, is out, number one, attempting to recruit this man to provide him an alibi for bank robbery.

The Court. I've admitted that.

Mr. Merritt. Yes, sir, but——

The Court. Without qualification.

Mr. Merritt. I'm showing his relationship to this man was one of an effort being made to get him involved.

* * * * * *

[2401–2404] * * * * * *

[2405] * * * * *

Mr. Binkley. I don't see how this could possibly be considered a furtherance of the Conspiracy. According to Mr. Merritt's statement, anything anybody said would be admissible. All you've got to do is say "conspiracy", and anything is mentioned.

Mr. Merritt. Here's a man in the same period, two or three week period, tries to recruit him on a bank robbery.

The Court. To give him an alibi, which of course would implicate him.

Mr. Merritt. Yes, sir.

Mr. Wilson. This man told him emphatically that he didn't want any part of it, and he has a very good reason why he doesn't want any part of it.

The Court. Of course it is not clear, he can't remember when the alibi conversation took place, but they could be related, conceivably he's trying to get the picture before this witness so that he would [2406] go along with his alibi.

Mr. **Merritt**. I think the government has made out sufficient connection for it to be put to the jury as to whether an instruction concerning furtherance——

Mr. **Binkley**. Well, there's no showing——

The **Court**. Isn't it for the jury to say whether or not it's in execution of the conspiracy? If it's subject to that interpretation reasonably, why wouldn't it be for the jury?

Mr. **Wilson**. I think Your Honor would have to pass on it first.

The **Court**. All I would have to say is that it's reasonably subject to that interpretation, but I don't have to finalize it.

Mr. **Wilson**. But I think Your Honor has certainly the ability to recognize it and to sift it away from certain other things whereas the jury, if they got it, it's awfully difficult to refute anything under instructions, and——.

The **Court**. Well, I don't think we ought to waste much time on it, because it doesn't seem to me like it's of major importance. Recall the jury. I think I'll limit it to Beard.

Mr. **Merritt**. May it please the Court, this is [2407] a crucial, vital issue.

The **Court**. Well, it's one isolated conversation. I've already let in all of the others.

Mr. **Merritt**. We haven't gotten in anything much.

The **Court**. Gotten in quite a bit in my opinion about what, tried to get him to go as an alibi for him.

Mr. **Merritt**. You're going to let it in to show—against Beard, to show Beard's knowledge?

The **Court**. And connection with the alleged conspiracy, certainly, yes, indeed.

Mr. **Merritt**. Of course, to do that now, I'm going to have to ask him what the conversation was about Ethridge.

The **Court**. Oh, absolutely. No question about that.

Mr. **Merritt**. Well, I misunderstood Your Honor on that.

Mr. **Wilson**. We object, Your Honor.

The **Court**. Whatever he said in admissible against him.

Mr. **Wilson**. I presume our objection has already been noted, may it please the Court, by Your Honor.

The **Court**. I'm going with you on it, I'm [2408] going to give this limiting instruction. I'm going to hold that it must be considered only as against Beard and not a statement made in execution of the conspiracy, so I'm ruling with you.

Mr. WILSON. I understand Your Honor is partly, but I'm asking that it be kept out altogether.

The COURT. Couldn't do that, it's obviously admissible against Beard.

You don't represent Beard anyway.

Mr. MERRITT. Excuse me, I didn't understand Your Honor on that.

The COURT. It's admissible against Beard.

* * * * *

[2409] (Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:).

The COURT. All right, proceed, and then I'll give the jury the proper instructions.

By Mr. MERRITT:

Q. We were talking about a conversation that I believe you said occurred three or four months ago.

A. Yes, sir.

Q. Is that your best recollection?

A. Yes, sir.

Q. Now would you explain to the jury what that conversation was and between whom?

A. Beard and I.

Q. And what was said, if anything, with regard to Gary Ethridge.

A. Well, he just said a friend of his run that pizza place, and he put up the bond to get him out of jail a couple of hundred dollars about a month or more——

Q. This is Gary who runs that pizza place?

A. Yes, sir, that's who he was referring to.

Q. Put up—now go ahead and tell the jury about that.

A. He just gave his sister two hundred dollars where he could get him out of jail, and he didn't have to pay [2410] him back, because he said that he knew something on him, and he wouldn't say nothing about it, he wasn't expecting to get the money back.

Q. He knew something—we've got to get it straight, he meaning Beard?

A. Beard knew something on Ethridge that he didn't have to pay his two hundred dollars back.

Q. Did he say anything else about Ethridge with relationship to money?

A. Well, he just said he had a good bit of money, if he needed money, you know, he could go to him and get it.

Mr. MERRITT. All right.

The COURT. Does that complete that conversation?

By Mr. MERRITT:

Q. Did he say anything else about Ethridge?

A. I don't remember if he did, no, sir.

The COURT. Now ladies and gentlemen of the jury, this testimony attributing certain statements to the defendant Beard will be subject to the same limitation that I mentioned a moment ago, that is you will consider this only with respect to the defendant Beard alone, and not as evidence against any of the other defendants involved in this case.

Now that is confined, this limitation I'm stating now is confined to this particular conversation that was [2411] just mentioned by the witness.

* * * * * * *

[2412–2462] * * * * * *

[2463] November 30, 1967
(Thirteenth day of trial)

(Whereupon, at 9:15 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the presence of the jury:)

* * * * * * *

[2464–2488] * * * * * *

[2489] JUDITH CAROLYN FARMER a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * * * *

Q. What is your age at the present time?

A. Eighteen.

Q. Do you have a job?

A. Yes.

Q. Where do you work?

A. Harvey's Department Store.

Q. Harvey's Department Store?

A. Yes.

Q. Do you know James Bostic?

A. Yes, I do.

Q. How long have you known Mr. Bostic?

A. Since 1965.

* * * * *

[2490] Q. Was there a time, Miss Farmer, when you knew Mr. Bostic pretty well and were pretty good friends with him?

A. Yes, sir.

Q. And was there a time during the past year when you were with Mr. Bostic almost constantly?

A. Yes, sir.

Q. When was that?

A. It was in the last part of April to the middle of May.

Q. Around the middle of May?

A. Yes, sir.

Q. Now during the time that you were with Mr. Bostic, were you staying here in Nashville, or were you somewhere else?

A. No, sir, we were in Kentucky, Louisville, Kentucky, first, and then stopped back through Nashville, and then Alabama and Florida.

Q. Florida?

A. Yes, sir.

Q. Where in Florida?

A. Daytona Beach.

Q. Did you go some place after you were in Florida?

A. Yes, sir, went to Bowling Green, Kentucky.

Q. Bowling Green, Kentucky?

A. Yes, sir.

[2491] Q. And about what time was it that Mr. Bostic left Bowling Green?

A. It was around the middle of May.

Q. And was that close to the end of this period of time that you were with him? Did you see him much after that?

A. No, sir, I haven't seen him since then.

Q. So during this period we are talking about, you and Mr. Bostic were traveling around together almost constantly?

A. Yes, sir.

Q. Back in Nashville only very briefly, is that correct?

A. Yes, sir.

Q. Now, during this trip, did you meet any of the other defendants in this case?

A. Yes, sir.

Q. Who did you meet?

A. Eugene Beard and Larry Ferguson.

Q. Where did you meet them?

A. In Daytona Beach, Florida.

Mr. Wilson. Who did she say?

Mr. Knight. Daytona Beach.

Mr. Wilson. I couldn't understand the persons she identified.

Mr. Knight. She stated she met Eugene Beard and Larry Ferguson.

[2492] The Court. Try to speak just as distinctly as you can and audibly so that all of the jury can hear you.

The Witness. I'm sorry, I have a cold.

The Court. Well, the acoustics in here are not too good anyway.

By Mr. Knight:

Q. Judy, possibly we should restate possibly the last two points.

You stated you had met two of the people who are connected with this case, I believe.

A. Yes, sir.

Q. And who did you state you had met?

A. I met Eugene Beard and Larry Ferguson.

Q. And where did you meet them?

A. Daytona Beach, Florida.

Q. And approximately when was this that you met them?

A. Close to the first of May.

Q. All right. Now during the time that you were traveling with Mr. Bostic, did he have some money with him?

A. Yes, sir.

Q. Do you know how much money he had with him?

A. Close to six thousand.

Q. Do you know—did he tell you precisely how much money he had?

[2493] A. Yes, sir.

Q. How much?

A. He said $5,750.

Q. $5,750.00?

A. Yes, sir.

Q. Did he tell you where he got that money?

A. Yes, sir.

Q. Where did he say he got it?

A. He said that he had gotten it from a robbery at the Bordeaux bank.

Q. Do you know when that robbery occurred?

A. Yes, sir.

Q. When was that?

A. April the 24th.

Q. All right. Now did he tell you where this money had come from toward the beginning of your travels with him or later?

A. At the beginning.

Q. When did he show the money to you, if he did?

A. The night he picked me up in Nashville.

Q. All right.

A. It was the night after the bank was robbed.

Q. And was the money that he showed you which he said came from the Bordeaux bank, was that the money that he used to pay your expenses during this period of time?

[2494] A. Yes, sir.

Q. All right. Now while you were in Daytona Beach, did Mr. Bostic make any comments or remarks to you about another criminal offense, planned criminal offense?

A. Yes, sir.

Q. And what was that?

A. The Orlinda Bank.

Q. What about the Orlinda Bank, was that going to be a robbery or burglary or do you know?

A. They were going to burglarize it.

Q. Burglarize it?

A. Yes.

Q. Did Mr. Bostic make any purchases in Florida that he said were connected with that proposed burglary?

A. Yes, sir.

Q. What did he purchase?

A. Some tanks.

Q. Do you know what kind of tanks, were they oxygen tanks or——

A. Oxygen tanks.

Q. And did he transport those oxygen tanks anywhere?

A. Yes, sir.

Q. Where did he take them?

A. To Bowling Green, Kentucky.

Q. From Daytona Beach to Bowling Green, Kentucky?

[2495] A. Yes, sir.

Q. How did he transport them?

A. In his car.

Q. Were you with him?

A. Yes, sir.

Q. And at the time that he transported them, you understood what the purpose of those tanks was, is that correct?

A. Yes, sir.

Q. And did you go to Bowling Green, Kentucky, with Mr. Bostic?

A. Yes, sir.

Mr. Binkley. If Your Honor please, I think the district attorney ought to refrain from leading as much as possible.

The Court. All right, don't lead.

Mr. Binkley. I'd like to object.

By Mr. Knight:

Q. Judy, I would like to ask you where you went with Bostic at that time?

A. From what time?

Q. From Daytona Beach.

A. I went to Bowling Green, Kentucky.

Q. And during the time you were in Bowling Green, Kentucky, did you meet anyone who was connected with this case?

[2496] A. Eugene Beard.

Q. All right. And did Bostic leave from Bowling Green, Kentucky, at any time while you were up there?

A. Yes, sir.

Q. And when was that?

A. It was—we arrived on Saturday, and he left, I believe it was the following Monday.

Q. While you were staying up there, did he go away from the motel and then come back at any time?

A. Yes, sir.

Q. And when was that?

A. It was on Saturday.

Q. All right, and did he subsequently leave the motel and come back?

Mr. Wilson. I'm going to object, he's giving her every answer.

The Court. Did he subsequently leave and come back? Did he leave? You want him to ask what did he do?

Mr. Wilson. The better form is what did he do.

The Court. All right, go ahead.

Mr. Knight. Your Honor, I want to direct her attention to something.

The Court. You have to direct her attention to something.

[2497] By Mr. Knight:

Q. Did he at any other time leave the motel up there and then come back?

A. Yes, sir.

Q. Did he tell you where he was going before he left on this subsequent time?

A. Yes, sir.

Q. When was this subsequent departure?

A. It was on Saturday after we arrived, the day we arrived.

Q. That was the first or the second departure?

A. This was the first.

Q. All right, the second one, when was that?

A. That was later on Saturday night.

Q. All right. I'll ask you whether—after you got out up there, whether he stated what he proposed to do, what his purpose in being up there was.

A. Yes, sir.

Q. And what was that purpose?

A. To burglarize the Orlinda Bank.

Q. And did he at any time leave the motel stating to you that he was planning to do that?

A. Yes, sir.

Q. And when was that?

A. It was Saturday afternoon.

[2498] Q. All right. That's your best recollection?

A. Yes, sir.

Q. Did he subsequently come back to the motel?

A. Yes, sir.

Q. What time of day was that?

A. Well, he first came back around seven o'clock, and he had Eugene Beard with him, and we went to get something to eat.

Q. Now what day was this that we are talking about?

A. This was Saturday.

Q. All right.

A. The same Saturday.

Q. And what did he say when he came in on Saturday evening?

A. He said that they had been to case the Orlinda Bank.

Mr. QUILLEN. We object as far as it applies to any one other than Bostic.

The COURT. Bostic?

Mr. QUILLEN. Yes, sir.

The COURT. Is this Bostic she's attributing the statement to?

Mr. KNIGHT. She's attributing the statement to Bostic, and said that the statement was made in the presence of Beard.

[2499] Mr. WILSON. Well, she didn't say that, as I recall.

The COURT. On what grounds, Mr. Quillen?

Mr. QUILLEN. Be hearsay as to anyone other than Bostic.

The COURT. These statements will be considered against whom the statements are attributed to, ladies and gentlemen of the jury. I've already instructed the jury on this.

Mr. KNIGHT. Your Honor, could I address the Court briefly?

The COURT. All right.

Mr. KNIGHT. The purpose of this preliminary question is to show that Miss Farmer was with Bostic and met these other people over a period of one month, that during this period of time, this money was being spent, it was being spent to defray her expenses, she knew why it was being spent, that actually part of the conspiracy charged in this case is to possess and conceal this money, and that as a necessary part of doing that, it was necessary certainly for Bostic to take her into his confidence about where it came from, and what it was involved with. That would be true insofar as Bordeaux is concerned.

Insofar as Orlinda is concerned, she was actually [2500]—she actually knew about it in advance, was present when they were transporting those tanks.

Mr. Binkley. I would like to—he's going to ask her these same questions now that he's been talking about all of this time.

The Court. Say you're going to?

Mr. Knight. I would like, I now plan to ask her to confirm what she's told to the Court, I believe she's already testified that.

The Court. I believe he's covered pretty much what she's testified to this point. I think the jury will have to be instructed that any statements attributed to anyone of the alleged conspirators is to be considered by the jury as to that particular conspirator only unless it's a statement made pursuant to some purpose of the conspiracy or to carry out some purpose of the conspiracy. If it is made to carry out or to effectuate some object or purpose of the conspiracy, why then it is a statement that may be considered by the jury as to all of the conspirators, alleged conspirators, provided the conspiracy itself is established, in other words established that there is a conspiracy among the defendants to effect the objects, to do and perfect the objects set forth in the indictment, that is count one, the conspiracy count.

[2501] All right, with that explanation that I have given the jury at least three or four or five times during the trial, go ahead.

By Mr. Knight:

Q. All right, Judy, getting back to Saturday night, incidentally, do you know what date that was?

A. No, I don't.

Q. Do you know approximately what date it was?

A. No.

Q. Do you know the month?

A. It was in May.

Q. Was it toward the beginning, or middle or end?

A. It was about the first week in May, first or second week in May, first or second weekend in May approximately.

Q. All right. And I believe you have testified that on this particular Saturday night, Mr. Bostic had come back to the motel room.

Now was anyone with him?

A. Yes, sir.

Q. Who was with him?

A. Eugene Beard.

Q. All right. And what did Bostic say at that time?

A. He said that they had been out to case the Orlinda Bank and it looked pretty good.

Q. Looked pretty good?

[2502] A. Yes, sir.

Q. Now on the following day, which would have been Sunday, did Bostic again leave the motel room at any time?

A. He was gone all Saturday night and he didn't return until Sunday morning.

Q. All right. And then after he returned on Sunday morning, did he again leave the motel room?

A. Yes, sir.

Q. Over Sunday?

A. Yes, sir.

Q. When did he get back—what time did he leave?

A. On Sunday?

Q. Yes, during Sunday.

A. On Sunday, it was real early in the morning, I'd say about three o'clock.

Q. Three o'clock in the morning?

A. Yes, sir.

Q. All right. And did he—what day—let's ask the question this way—what day did he leave Bowling Green?

A. The following Monday.

Q. Monday morning?

A. Yes, sir.

Q. Now on the Monday morning that he left Bowling Green, did you see him early on that morning?

A. I can't remember.

[2503] Q. All right. Do you remember seeing Bostic early in the morning on some morning over this weekend that we are talking about?

A. Yes, sir, Sunday morning.

Q. Are you certain that it was Sunday morning, or are you a little confused about the times?

A. Well, he come—it was Sunday morning, because he had just come back from Orlinda.

Q. On this morning when he came back, what did he do?

A. He just stopped in for a moment, and he said that things had fouled up.

Q. Things had fouled up?

A. Yes, sir.

Q. And what did he say about how they had fouled up?

A. He said that there was a watchman or patrolman, someone around the bank.

Q. All right. And did he say what he and other people had done?

A. They had left.

Q. All right. Did he tell you who had gone up there to Orlinda with him?

Mr. Binkley. May it please Your Honor, I'd like to make one point here, if this is just going in as far as Bostic is concerned, Bostic is not charged in [2504] the indictment with having anything to do with the Orlinda Bank, and I don't think it should go in at all if that's the only purpose for it going in.

The Court. They are not limited to the overt acts alleged in the indictment, the government isn't.

* * * * *

By Mr. Knight:

Q. Judy, directing your attention back to the first part of April when you first started seeing Bostic, do you recall when you first saw Bostic in April?

[2505] A. Yes, sir.

Q. Do you know approximately when that was?

A. It was—I don't know the exact date.

Q. Do you know what part of April it was?

A. It was around the middle of April.

Q. All right. Was it before—do you remember when the Bordeaux Bank was robbed?

A. Yes, sir.

Q. Did you first see Bostic before or after the Bordeaux Bank was robbed.

A. Before.

Q. All right. Was it more than a week before or less than a week or how much time?

A. It was more than a week.

Q. More than a week before?

A. Yes, sir.

Q. And where was he when you saw him?

A. He was in General Hospital.

Q. All right, and you were visiting him in General Hospital?

A. Yes, sir.

Q. Now how did he come to be in General Hospital?

Mr. Binkley. I object to that; if Your Honor please. I don't see how that's relevant.

Mr. Knight. Your Honor, it's the same objection [2506] Mr. Binkley has made previously about the background.

The Court. If the witness knows.

By Mr. Knight:

Q. If you know, Judy——

The Court. Show her relationship to the defendant.

By Mr. Knight:

Q If you know, Judy, how did Bostic happen to be in General Hospital at that time?

A. He had broke his arm and it hadn't mended back properly, and they were going to break it again.

Q. Previously to that where had he been?

A. State penitentiary.

Mr. Binkley. I object to that.

The Court. It has already been brought out. Go ahead.

By Mr. Knight:

Q. He had been in the state penitentiary?

A. Yes, sir.

Q. You visited him over there, was that in the afternoon or morning or what part of the day?

A. It was at night.

Q. All right, and on the next day, did you get any information about Mr. Bostic?

A. Yes, sir.

[2507] Q. What did you learn about him?

A. He had ran off from the hospital.

Q. All right. Subsequent to that time, did you hear from him?

A. Yes, sir.

Q. How did you hear from him?

A. By telephone.

Q. And how many times did he call you during, say, the period between the time he escaped and the time of the Bordeaux Bank robbery?

A. It was several; I don't know the exact number.

Q. Several times. What would he tell you during these times that he was calling?

A. That he was all right.

Q. Did he tell you where he was?

A. He told me that if I needed to get in touch with him, I could get in touch with him at Eugene Beard's home.

Q. At Eugene Beard's home?

A. Yes, sir.

Q. All right. Now do you remember—you say you do remember the day that the Bordeaux Bank was robbed; do you remember what you did the day after the Bordeaux Bank was robbed with respect to Bostic?

A. Yes, sir.

Q. What did you do?

[2508] A. I called Eugene Beard's home.

Q. About what time of day was that?

A. About one o'clock.

Q. Was that one o'clock in the afternoon?

A. Yes, sir.

Q. And who did you talk to?

A. Larry Ferguson.

Q. Larry Ferguson?

A. Yes, sir.

Q. Without stating what that conversation was about, did you later in the day get a phone call from Bostic?

A. Yes, sir.

Q. And where did he say he was calling from?

A. Louisville, Kentucky.

Q. And what was that conversation about?

A. He was going to come and get me that night.

Q. He was going to come and get you?

A. Yes.

Q. And did he subsequently do that?

A. Yes, sir.

Q. About when was this?

A. The same evening, around seven.

Q. Around seven o'clock?

A. Yes, sir.

Q. Was somebody with you when Bostic picked you up?

[2509] A. Yes, sir.

Q. Who was that?

A. Shirley Burton.

Q. Who is Shirley Burton?

A. She's a friend of mine and Jimmy's cousin.

Q. Jimmy's cousin?

A. Yes.

Q. Where did Bostic pick you up?

A. At the end of Litton Avenue.

Q. What kind of car was he driving?

A. A Corvette.

Q. All right. And did you notice anything about the way he was dressed or anything?

A. He was dressed up, real fancy, had on a suit and diamond ring.

Q. Did he tell you anything about where he had gotten that car?

A. Yes, sir.

Q. What did he say?

A. He had bought it in Louisville.

Q. Had bought it in Louisville?

A. Yes, sir.

Q. Now during the—when was it that he told you about the money, about where he had gotten it?

A. That night.

[2510] Q. That night. Was it driving up to Louisville?

A. Yes, sir.

Q. And after you got to Louisville, did he show you something?

A. Yes, sir.

Q. What was that?

A. A suitcase full of money.

Q. And did he tell you how much was in the suitcase?

A. Yes, sir.

Q. And that's the amount you just testified, five thousand, seven hundred fifty dollars?

A. Yes, sir.

Mr. Wilson. I didn't understand the answer to that.

Mr. Knight. She said, yes, sir, that that was the amount she testified to.

Mr. Wilson. That there was five thousand——

Mr. Knight. Seven hundred fifty dollars.

Mr. WILSON. In the suitcase?

Mr. KNIGHT. Right.

Mr. WILSON. When he got back to Louisville after the purchase of the automobile and the fancy clothes and the diamond ring?

Mr. KNIGHT. Right.

By Mr. KNIGHT:

[2511] Q. How long did you and Bostic stay in Louisville?

A. Just a couple of days.

Q. And during the time that you were up there, did he give you any further information about this bank robbery?

A. Well, he gave me information about it all along.

Q. All right. Now after you left Louisville, I believe you testified that you went to Huntsville, Alabama.

A. Yes, sir.

Q. And then eventually you went to Daytona Beach, Florida, is that right?

A. Yes, sir.

Q. Where did you stay in Daytona Beach, Florida?

A. At the Sea Dip Motel.

Q. Did you subsequently move from the Sea Dip Motel?

A. Yes, sir.

Q. Where did you move to?

A. We rented a house on River Breeze.

Q. All right. Now during this period of time from the time you were picked up in Nashville until you got down to Daytona Beach, had Bostic given you additional information about this bank robbery?

A. Yes, sir.

Q. And would you say that by the time you had been in Daytona Beach for some period that you had received detailed information about it?

[2512] A. Yes, sir.

Q. Now, Judy, I'm going to ask you some questions about what he told you with respect to the details of this bank robbery.

First of all, did he tell you what his part in the bank robbery was?

A. Yes, sir.

Q. What did he say his part was?

A. He was one of them that went in the bank.

Q. He was one of the men who went in the bank?

A. Yes, sir.

Q. Did he tell you who the other man was or other men, if there were more than one other?

A. Yes, sir.

Q. Who was that?

A. Larry Ferguson.

Q. Did he tell you anything about how Mr. Ferguson or how he was armed at that time, what kind of weapons they had?

A. Sawed-off shotgun.

Q. Who did he say had the sawed-off shotgun?

A. Larry Ferguson.

Q. Did he tell you anything about the way they were dressed, any of the clothing they had on?

A. Yes, sir.

Q. What did he say about that?

[2513] A. He said that he had on black boots.

Q. Had you ever seen the boots that he said he had on?

A. Yes, sir.

Q. What kind of boots were they?

A. They were high-top boots, come up about the calves of your leg.

Q. What color were they?

A. Black.

Q. Did he tell you what he had done with those boots?

A. Yes, sir.

Q. What did he say?

A. Thrown them in the river.

Q. Did he tell you why he threw them in the river?

A. Because he had worn them in the bank robbery.

Q. All right. Wanted to get rid of them?

A. Yes, sir.

Q. Did he tell you anything about disguise, anything of that nature that they might or might not have used?

A. Yes, sir.

Q. What did he say?

A. He said he was supposed to have worn a nylon stocking over his face, but it bothered him, and he just wore sunglasses.

[2514] Did he say anything about Mr. Ferguson in that respect, whether Ferguson did or didn't wear a stocking mask?

A. Yes, sir.

Q. What did he say?

A. Larry wore a stocking over his face.

Q. Said Ferguson did wear a stocking mask?

A. Yes.

Q. Now did he tell you anything about something he had taken from the bank other than just regular currency?

A. Yes, sir.

Q. What was that?

A. A bag of pennies.

Q. Did he tell you how many—how much that was?

A. I believe it was fifty dollars.

Q. Fifty dollars worth of pennies?

A. Yes, sir.

Q. Now did he tell you who had planned the robbery?

A. Yes, sir.

Mr. Wilson. I'm going to object, if Your Honor please, at this point, because this is not in furtherance of the conspiracy; this is an admission or at its very best a hearsay admission on behalf of the defendant Bostic and to nominate and name the others by hearsay that this girl is about to, unless it was in furtherance of the conspiracy and certainly I don't see how it could [2515] be, and we object to it being under the rule.

The Court. If she purports to name other conspirators, of course she's already named the party that went in the bank with him, do you claim that those statements per se would be in furtherance of the conspiracy?

Mr. Knight. Yes, sir, Your Honor, I would.

The Court. On what hypothesis?

Mr. Knight. On the hypothesis, as I've already indicated, and as further testimony will reveal, that that this time she was aware of the fact that this money had been stolen and she knew where it had been stolen from, she was helping Bostic spend the money. Obviously Bostic had to make some explanation to her, had to take her into his confidence about the money. He couldn't just display it to her and tell her this is the money I got, where I got it.

Mr. Binkley. I don't think that's obvious at all.

Mr. Wilson. We object to that.

The Court. What's that?

Mr. Knight. I wonder if I could finish my statement, Mr. Wilson.

The Court. I don't understand you.

Mr. Binkley. I don't think his statement is proper.

[2516] The Court. It's his theory, and I have to know his theory before I can rule on the objection. The jury of course will disregard this colloquy between Court and counsel.

Mr. Knight. That it was a necessary part of this conspiracy for Bostic to explain to this woman where this money came from.

The Court. Once—you mean to make the explanation once he had taken her in his confidence?

Mr. Knight. It was necessary for him to take her into his confidence in order to spend this money. Of course part of the conspiracy is the——

The Court. Alleged conspiracy.

Mr. Knight. Alleged conspiracy is the possession of the money.

The Court. To knowingly receive, possess and conceal money.

Mr. Knight. If Your Honor please, there is a case very close in point on this.

The Court. Well, do you have it abstracted there?

Mr. Wilson. Of course we ask the counter question, why was it necessary? Why couldn't he have spent the money on this young lady without telling her where it came from?

[2517] Mr. Binkley. If Your Honor please, I'd like——

The Court. Let me read this first. I can't read two things at once.

All right, pass your authority to me.

Mr. Binkley. I'd like to call the Court's attention especially to page 729, the statement by Mr. Justice Jackson.

The Court. Is that his concurring opinion in this case?

Mr. Binkley. That was his concurring opinion in the case, if Your Honor please, that was just cited with approval in the Workman case; the Workman case bears on our objection.

The Court. Well, any further authority?

Mr. Knight. I do have a further comment, Your Honor, in this same connection.

The Court. All right.

Mr. Knight. And that has to do with the transportation of these tanks that were to be used in the burglary. Now she has covered that to some extent in her preliminary testimony. Her testimony was that the tanks were bought in Daytona Beach, that she knew that the purpose of those tanks——

The Court. That testimony has already been admitted, hasn't it?

[2518] Mr. Knight. Yes, but I'm showing this, indicating the extent to which it was necessary for these people to take her into their confidence.

The Court. Well, I'll let the testimony in, but with the same admonition to the jury that any statement or comment from any of the alleged conspirators which is not in furtherance of some object of the conspiracy, if a conspiracy did in fact exist, which you must find before these statements would be admissible, if it is not in furtherance of the object or purpose of the conspiracy, then it may be considered as evidence only as to the particular party to whom the statement is attributed by the witness.

If it is in furtherance of the object of the conspiracy and you find that a conspiracy existed, it may be considered as evidence with respect to all of the co-conspirators to whom it relates or pertains.

All right, go ahead with that explanation.

By Mr. Knight:

Q. All right, Judy, to repeat my last question, did Bostic tell you who planned this robbery?

A. Yes, sir.

Q. And who did he say planned it?

A. Gary Ethridge.

Q. Did he tell you how many get-away cars were [2519] involved?

A. Yes, sir.

Q. Did he tell you what kind?

A. Yes, sir.

Q. What kind of get-away cars did he say were involved?

A. A Pontiac and a Cadillac.

Q. Did he tell you who provided those cars?

A. Yes, sir.

Q. Who did he say provided them?

A. Gary Ethridge.

Q. Now did he tell you after they left the bank who drove the get-away car?

A. Yes, sir.

Q. And who was that?

A. He did.

Q. Bostic did?

A. Yes, sir,

Q. Which car was that that was used at the bank?

A. Pontiac.

Q. Where did Bostic drive the Pontiac, according to his statement to you?

A. The TB Hospital.

Q. All right. And what happened at the TB Hospital?

A. Well, the other car was waiting there with [2520] Sammy Cole.

Q. What kind of car was that again?

A. Cadillac.

Q. The other car was waiting there, and Sammy Cole was waiting there?

A. Yes, sir.

Q. What did they do after they got to the TB Hospital, according to Bostic's statement?

The Court. What did he say; what was the conversation?

By Mr. Knight:

Q. According to Bostic's statement to you, what did they do after they got to the TB Hospital?

A. Larry Ferguson took the Cadillac and left and Jimmy and Sammy went up into the woods and took the money.

Q. And according to Bostic's statement to you, did he and Sammy get back from the woods up there?

A. Someone come and picked them up.

Q. You can't remember who he said picked them up?

A. No, sir.

Q. According to Bostic's statement to you, what did—what was Ferguson supposed to do after he left Sammy and Bostic out of the car?

A. He was to drive around in the subdivision, a subdivision nearby and then he stopped over in a little eating [2521] joint on one side of it and stayed around for a while.

Q. And according to Bostic's statement to you, how was Ferguson supposed to get back, do you remember?

A. No, sir, I don't remember that.

Q. Did Bostic tell you how the money was split from this robbery?

A. Yes, sir, it was equally among them.

Q. And how many portions?

A. I believe it was five.

Q. Five portions?

A. Yes, sir.

Q. Do you recall Bostic telling you the names of the people that got splits from this robbery, parts of the money?

A. Yes, sir.

Q. Who were they?

A. Well, it was him and Gary Ethridge and Sammy Cole, and a guy they call Sarge.

Q. You don't remember Sarge's last name?

A. No, sir.

Q. Okay, Sammy Cole, Sarge, Bostic, Ethridge?

A. And Ferguson.

Q. Larry Ferguson?

A. Yes.

Q. Did Bostic tell you anything about where he went [2522] the evening after this—first of all, did he tell you when the money was split up?

A. Yes, sir.

Q. Can you recall definitely where he said the money was split up?

A. He called the guy Perry.

Q. You think it's Perry or do you know it's Perry, or are you kind of vague about it?

A. I'm kind of vague about it.

Q. All right. Did he tell you—well, when did this take place, according to Bostic's statement to you?

A. The afternoon, night, I can't remember, it was the same day as the robbery.

Q. The same day as the robbery?

A. Yes.

Q. Did Bostic tell you where he went after the robbery?

A. Yes, sir.

Q. Where was that?

A. Louisville, Kentucky.

Q. Did he tell you who if anyone went with him to Louisville, Kentucky?

A. Yes, sir.

Q. Who was that?

A. Gary Ethridge and Sarge, the guy they call [2523] Sarge, and Sammy Cole, I believe.

Mr. WILSON. What was the last statement?

Mr. KNIGHT. Sammy Cole.

By Mr. KNIGHT.

Q. Did Bostic tell you where he spend the weekend? Now this robbery occurred on a Monday, did Bostic tell you where he spent the weekend prior to the robbery?

A. Yes, sir.

Q. Where was that?

A. Manchester, Tennessee.

Q. Where in Manchester, in a house or where?

A. In a motel.

Q. Motel in Manchester. Did he tell you who went with him, if anyone?

A. To Manchester?

Q. Yes.

A. Yes, sir.

Q. Who was that?

A. Larry Ferguson.

Q. Did he tell you what the reason was that he and Larry Ferguson went to Manchester?

A. Well, he was on the run.

Q. Who is that that's on the run?

A. Bostic.

Q. All right. And whose idea, if he told you, [2524] whose idea did he say it was that he and Ferguson go to Manchester?

A. Gary Ethridge.

Q. Did Bostic make any statement to you about what he and Ferguson did immediately prior to going into the Bordeaux Bank?

A. Yes, sir.

Q. What did he say?

A. He said that they sat out front for a while until people quit coming around.

Q. And what was the purpose of waiting out front?

A. To wait until the people quit coming in and out of the bank until there was no one around.

Q. Did Bostic make any statement about whose idea or instructions this was?

A. I can't remember.

Q. You can't remember that?

A. No.

Q. Did Bostic, during the time he was telling you all of this, did Bostic make any statement to you about Ethridge's relationship to him and Ferguson?

A. He was—he talked like he was the ring leader.

Q. Now after you had been in Daytona Beach some period of time, did you meet—I believe you stated that you met some of the other people involved in this case and who was [2525] that again that you met down there?

A. Eugene Beard and Larry Ferguson.

Q. All right. Did you see—was the first time you had met these people?

A. Yes, sir.

Q. Did you see them off and on during the time you were down there?

A. Yes, sir.

Q. Would there be times when Bostic would leave the place where you all were staying and go off with these other people?

A. Yes, sir.

Q. And during the time that you all were down there, did Bostic begin to talk about another possible criminal offense?

A. Yes, sir.

Q. And what was that?

A. The Orlinda Bank robbery.

Q. Whose idea was that, do you know, did he tell you whose idea it was?

A. His.

Q. How did Bostic happen—did he indicate to you how he happened to get that idea?

A. Yes, sir.

Q. How was that?

[2526] A. Well, his grandmother lives up around there, and he knew the territory, and he said there wasn't any police for several miles away.

Q. Did he make any statement to you about suggesting this idea to someone else or talking to someone else about this idea that he had?

A. Yes, sir.

Q. And who was that?

A. Gary Ethridge.

Q. Now do you remember him making any statement about buying something in connection with this burglary?

A. Yes, sir.

Q. And I believe you testified that those were tanks of some kind?

A. Yes, sir.

Q. Tell the jury what you remember about that, the purchase of those tanks.

A. Well, him and Jimmy Jenkins had left—

Q. Who is Jimmy Jenkins?

A. A friend of his.

Q. Friend of his?

A. Who was in Daytona.

Q. Do you know who he was down there with?

A. He was down there with Larry Ferguson.

Q. Down there with Larry Ferguson?

[2527] A. Yes, sir.

Q. And Eugene Beard?

A. Yes, sir.

Q. Now what about Bostic and Jimmy Jenkins and these tanks?

A. Well, Jimmy Jenkins and Jimmy Bostic had left one night, I believe it was Thursday night, to go to Miami, Florida, to try and buy the tanks, and they couldn't find them down there, and they couldn't find them down there, and they bought them in Daytona the next day.

Q. They bought them in Daytona the next day?

A. Yes, sir.

Q. All right. Now do you remember approximately when it was that you left Daytona?

A. It was on a Friday.

Q. It was on a Friday?

A. Yes, sir.

Q. And would that have been in what month?

A. May.

Q. Would it have been around the first or second week of May or what?

A. Yes, sir, be around the second week.

Q. Somewhere in the second week of May?

A. Yes, sir.

Q. Who rode back with you from Daytona?

[2528] A. Shirley Burton.

Q. And Bostic go with you?

A. Yes, sir.

Q. Where were the tanks during that trip?

A. They were in the trunk of the car.

Q. Where did you go from Daytona?

A. To Bowling Green, Kentucky.

Q. Bowling Green, Kentucky?

A. Yes, sir.

Q. And who, if anyone, did you meet in Bowling Green, Kentucky?

A. He met Eugene Beard and Larry Ferguson and Jimmy Jenkins that I know of.

Q. All right. And during the time that he was up there, did he meet with these people where you were, or did he go off and meet with them, or what was the situation about that?

A. Most of the time he met them off from me. I hardly ever seen him after we got to Bowling Green.

Q. Did he make any statement to you about what they were doing up there?

A. Yes, sir.

Q. What did he say?

A. They were up there to burglarize the Orlinda Bank.

[2529] Q. Did he tell you who all was to be involved in that burglary?

A. I can't remember.

Q. Just name the people that he told you, as many as you can.

A. Well, it was him, and Eugene Beard, and Jimmy Jenkins, and he said Gary Ethridge and Sammy Cole.

Q. All right. Now do you remember what day of the week that was that you got up there to Bowling Green?

A. I believe it was Saturday.

Q. Got there you believe on Saturday, about what time of day?

A. It was early in the afternoon.

Q. What happened on that Saturday afternoon that you recall? Did Bostic leave any time?

A. Oh, yes.

Q. Did he tell you where he was going on that Saturday?

A. Well, he left and he said they were going to have a run through about the Orlinda Bank.

Mr. WILSON. The voice has dropped down to a monotone.

The COURT. I know you have a cold, but try to keep your voice up where everyone can hear you.

By Mr. KNIGHT:

[2530] Q. Now, Judy, on Sunday evening, did Bostic leave the hotel on the evening of Sunday?

A. Yes, sir.

Q. Did he tell you who he was leaving with at that time?

A. Sunday evening?

Q. Yes.

A. I don't remember him leaving on Sunday evening.

Q. Well, do you remember him leaving on the day before he returned to Nashville?

A. He left on Saturday night, and as I said before, he come back early sometime Sunday morning, but I don't remember.

Q. You are sure—are you sure that was Saturday night that he left or are you having some trouble remembering that?

A. I can't remember, it's been so long ago.

Q. To the best of your recollection, it was Saturday night, but you could be wrong about it, is that right?

A. Yes, I could be wrong.

Q. Was it one of the nights over the weekend that you were up there?

A. It was one of the nights of the weekend, yes.

Q. Now on this night, whichever one it was that he left the motel, did he tell you where he was going?

A. Yes.

[2531] Q. Where was he going?

A. He was—well, at night?

Q. Yes.

A. After I said that we had come back and had supper, he said he was leaving to go over to the motel.

Q. And what motel was he talking about?

A. The Holiday Inn.

Q. And who was over there?

A. That's where Eugene Beard was staying, and Larry Ferguson, and Gary Ethridge and Sammy Cole was supposed to be down there.

Q. All right. And then did he come back in that evening?

A. After he met with them?

Q. Yes.

A. No.

Q. When was the next time you saw him?

A. The following morning about three o'clock.

Q. About what time?

A. Three o'clock.

Q. Very early in the morning?

A. Very early in the morning.

Q. What did he say to you?

A. Things had fouled up.

Q. What was he referring to?

[2532] A. The Orlinda Bank burglary.

Q. What did he say about how things had fouled up?

A. Said there was a watchman there or patrolman or something around in the area.

Q. And what did he say they had done?

A. They left.

Q. Now how long after this morning was it that Bostic left Bowling Green?

A. It was the next day.

Q. The following day?

A. The following day.

Q. Did you stay up in Bowling Green?

A. Yes, sir.

Q. Did you have in your possession a telephone number that Bostic had given you?

A. Yes, sir.

Q. Whose number was that?

A. Gary Ethridge's.

Q. And when had Bostic given you that telephone number?

A. He had given it to me earlier, before we had gotten to Florida.

Q. Did he tell you what his purpose was in giving you that telephone number?

A. Yes, sir.

[2533] Q. What did he say?

A. He said that if we ever got split up or anything happened, I was to get in touch with Gary.

Q. Get in touch with Gary?

A. Yes, sir.

Q. Did you ever use that telephone number?

A. Yes, sir.

Q. When was that?

A. That was a couple of days after he left Bowling Green.

Q. And you called Gary Ethridge's house?

Q. Who answered?

A. Eugene Beard.

A. Yes, sir.

Q. And then did you or did you not get to talk to Bostic?

A. Yes, I did.

Q. Did you see Bostic at all after that?

A. No. Yes, sir.

Q. When was that?

A. It was a couple of days later.

Q. Was that a brief visit or a lengthy visit?

A. It was a brief visit.

Q. And that was the last time until today that you have seen him?

[2534] A. Yes, sir.

Q. Did Bostic, at the time he left Bowling Green, did he tell you what his reason for leaving was?

A. Yes, sir.

Q. What was that?

A. To plan another bank robbery.

Q. Judy, I believe you told me that the—when you got to Louisville back in April——

A. Yes, sir.

Q. Bostic showed you a suitcase full of money.

A. Yes, sir.

Q. Did he tell you whose suitcase that was?

A. Yes, sir.

Q. And whose suitcase did he say it was?

A. Gary Ethridge's.

Q. All right, and what subsequently happened with respect to that suitcase?

A. Well, when we were coming back from Louisville, we stopped off in Nashville to leave it at Gary's house.

Q. To leave it at Gary's house?
A. Yes, sir.
Q. Do you know where Gary's house is located?
A. Yes, sir.
Q. Where is that?
A. On Dove Place.
[2535] Q. Did you drive out there?
A. Yes, sir.
Q. Was Mr. Ethridge there?
A. No, sir.
Q. What did you do?
A. We left the suitcase and left.
Q. Where did you leave it?
A. On the carport.

Q. And just one further question. I'm not sure this is clear. Where did you say Gary Ethridge and Sammy Cole were staying or where did you say that Gary Ethridge and Sammy Cole were staying in Bowling Green?

A. In Bowling Green?
Q. Yes.
A. Holiday Inn Motel.

* * * * *

Mr. Knight. I have no further questions.

[2536–2598] * * * * *

[2599] * * * * *

CHARLES D. CLAYTON * * *

DIRECT EXAMINATION

By Mr. Merritt:

Q. Mr. Clayton, state your name again for the jury.
A. Charles D. Clayton.
Q. Where are you from, sir?
A. Orlinda, Tennessee.
Q. And what do you do in Orlinda?
A. I'm cashier in the Bank of Orlinda.
Q. Cashier in the Bank of Orlinda, and where do you live?
A. I live in an apartment above the bank.

Q. You live in an apartment above the main business part of the bank?

A. That's right, sir, on the second floor.

[2600] Q. All right, sir.

Is that bank insured by the Federal Deposit Insurance Corporation?

A. Yes, sir, it is.

Q. Do you have that insurance certificate and a copy of the same?

A. Yes, I do.

Mr. Merritt. Unless there's some objection, may it please the Court, I'll ask that a copy of the certificate indicating insurance be admitted into evidence.

The Court. When does that indicate the insurance became effective?

Mr. Merritt. Well, this insurance——

By Mr. Merritt:

Q. When was it in effect?

A. You mean originally or——

Q. No, I mean was this certificate in effect on May the 15th of 1967?

A. Yes, it was. I have an assessment base and the check where it was paid.

Q. You have the check in which the insurance premium was paid?

A. That's right.

Q. What is the date of that check?

[2601] A. January 17, 1967.

The Court. Paid on an annual basis?

The Witness. Semiannual.

The Court. Semiannual basis?

The Witness. Yes, sir.

By Mr. Merritt:

Q. Are those copies that I can have, or do you want to keep those?

A. I guess I'll need them. You might make a copy of them if you need them.

Q. That's all right. You are testifying that the insurance with the Federal Government Insurance Corporation was paid up as of May 15th or thereabouts?

A. That's right.

Q. 1967?

A. That's right.

The COURT. Let the certificate be filed as whatever it is.

The CLERK. Number 45.

(Plaintiff's Exhibit No. 45 was marked for identification and filed.)

By Mr. MERRITT:

Q. Mr. Clayton, let me ask you this. Did somebody enter that bank in May?

A. Yes, sir, early morning of May 15th.

[2602] Q. Early morning of May 15th. What day was that on, May 15th, do you recall?

A. It was on Monday morning.

Q. And it was early in that morning that it was entered?

A. That's right.

Q. All right. Now where were you—did you stay at your apartment above the bank that evening?

A. That's right, I was asleep.

Q. I see. Just describe to the jury now what you heard and what you know about it.

A. Well, I was awakened about two-fifteen or two-twenty, somewhere, about that time, and the first sound that I remember was a dull thud down in the bank, and then in just another second or two, another dull thud, and sat up straight in bed for I guess maybe five seconds, and then I got down on the floor, and I had a switch over by the side of the wall, and I went to that switch, and that switch, when you turn it on, will turn on all of the lights in the bank, and I guess the next thing I did then was scramble around in a drawer looking for a gun, which probably took me ten or fifteen seconds more to find that, and then I went to the front window in the bank where I could look out on the street to see if I could see any automobile or anything, and I couldn't see any vehicle of any kind, and then I went out to a side [2603] window that was open where I could listen to see if I could hear any sound of anyone moving or any automobile leaving or anything, and also had a siren there that I could have turned on if I had known for sure it was someone in there.

Q. So you heard some noises downstairs, and you went over and switched on the lights that light up the whole—light up the bank?

A. That's right, there are three banks of four each, forty-eight.

Q. Fluorescent lights?

A. Yes.

Q. And after turning on the lights and looking around, then what did you do?

A. Well, I waited for, I guess, at that open window fifteen or twenty minutes to see if I could hear any sound and never could hear any more sound at all.

Q. I see. Then the next morning—did you leave the lights on all night?

A. Yes.

Q. The next morning, did you go down into the bank?

A. Yes, about six o'clock, I went down—well, I went to the front door, and I could see from the front door that the back door was standing open. I went around to examine it, and it had been broken in, the glass had been broken in, and the door was standing open, the back door, so I didn't go [2604] in then. I went back home and called the sheriff and I waited until he came out, and he went in with me.

Q. And what did you and the sheriff find when you went in there early that morning on Monday the—what would that be, the 15th, 16th?

A. Fifteenth.

Q. What did you and the sheriff find?

A. Well, the only thing we found inside was a string of paper matches from the back door up to the front of the vault, and in front of the vault there was a set of acetylene torches.

Q. A set of acetylene torches?

A. Yes, sir; and two tanks.

Q. Two tanks?

A. Yes, sir.

Q. These paper matches, had they been struck?

A. Yes, they had.

Q. Now was there any damage done inside the bank?

A. None except to the back door.

Q. So evidently you heard them pretty soon and turned on the lights?

A. I believe I scared them away.

Q. All right, sir. Now I believe you told me that you took some pictures of those tanks. Do you have those pictures with you?

[2605] A. Yes, I do. I took those with a Polaroid camera before they were ever moved.

Q. You took these pictures of the tanks with a Polaroid camera before they were removed from the bank, is that right?

A. Yes, before they were ever touched at all.

Q. I see. Do you mind my introducing these in evidence? Can I have these?

A. That's all right.

Mr. MERRITT. I want to introduce the tanks in evidence too, may it please the Court, if the Marshal will bring those tanks in. I believe they are in the Marshal's office.

If you will just bring them and put them right here somewhere where the witness and the jury can see them, maybe you can just put them right out here.

Now I'll ask that this be introduced in evidence as Government Exhibit No. 46.

The COURT. Let it be admitted.

(Plaintiff's Exhibit No. 46 was marked for identification and filed.)

Mr. MERRITT. I'll ask Mr. Clayton to come down and take a look at these tanks right here.

The COURT. All right.

By Mr. MERRITT:

[2606] Q. I'll ask you if those are the same tanks that you found inside that morning, May the 15th, inside the Orlinda Bank?

A. They are.

Q. How can you tell that?

A. Well, I remember how they look and I also remember the tags that were on them, there was one, George Fowler Company, and——

Q. You remember the tag that was on it—man, these are heavy—this tag right here you're talking about?

A. Yeah, West Palm Beach, Florida.

Q. Says some company, West Palm Beach, Florida, says inspected and filled by this Fowler Company, West Palm Beach, Florida?

A. That's right.

Q. All right, sir. Now I believe one of them is an acetylene tank and the other one is an oxygen tank.

A. That's what they told me. I'm not too familiar with tanks.

Q. You are not an expert on that?

A. No, sir.

Q. And this thing right here, what is that?

A. That was hanging on—that's the torch and that was hanging on top of one of the tanks, I think the oxygen tank, and also there was a pair of dark glasses hanging [2607] on top of them.

Mr. Merritt. May it please the Court, I don't quite know how we are going to do this, but I want to introduce this in evidence as Government Exhibit 47.

The Court. Collective Exhibit.

Mr. Merritt. Yes, sir.

The Court. Let it be admitted.

(Plaintiff's Exhibit No. 47 was marked for identification and filed.)

Mr. Merritt. Thank you, Mr. Clayton.

* * * * *

[2608] * * * * *

[2609] SHIRLEY ANNE BURTON, * * *

DIRECT EXAMINATION

By Mr. Knight:

Q. Shirley, how old are you?

A. Eighteen.

Q. Where do you live?

A. 1605 Essex Avenue.

Q. Could you speak up a little louder so the jury can hear you?

A. 1605 Essex Avenue.

Q. Is that in Nashville?

A. Yes, sir.

Q. Do you know James Bostic?

A. Yes, sir.

Q. Are you related to him in some way?

A. Yes, sir.

Q. What are you, some kind of cousin of his?

A. Yes, sir.

Q: Did you see James Bostic at any time during April of this year?

A. It was sometime in April. I can't remember exactly when it was.

[2610] Q. Can't remember the exact date?

A. No.

Q. Where was he when you saw him?

A. At the corner of Litton Avenue and Branch.

Q. And Branch Street, Litton Avenue and Branch Street?

A. Yes, sir.

Q. And where was he? Was he walking?

A. No, sir, he was in a car.

Q. In a car?

A. Yes, sir.

Q. Do you know what kind of car?

A. A Corvette.

Q. Corvette?

A. Yes, sir.

Q. Was anyone with you at that time?

A. Judy Farmer.

Q. Is Judy Farmer a friend of yours?

A. Yes, sir.

Q. What did Judy do when you all saw Mr. Bostic?

A. She got in the car with him.

Q. Do you know whether Mr. Bostic had previously called her and arranged to meet her there?

A. Yes, sir.

Q. Had he done so?

[2611] A. Yes, sir.

Q. And then after that, did you hear from Judy or Bostic at any time?

A. Later on.

Q. About——

A. When they were in Florida.

Q. What period of time was that?

A. I guess it was about——

Q. A week, two weeks?

A. A week or two, I'm not certain.

Q. And you received a phone call from—was it from Bostic?

A. Yes, sir.

Mr. **Binkley**. Object to the leading, if Your Honor please.

The **Court**. Well, don't lead.

By Mr. **Knight**:

Q. And where did he say he was at that time?

A. Daytona Beach.

Q. Florida?

A. Florida.

Q. And what did he say to you?

A. He said they were having fun, he wished I would come down there.

Q. All right, and what was the result of that [2612] conversation? Did you go down there?

A. Yes, sir.

Q. How did you travel?

A. Airplane.

Q. Where did you get the money to go down?

A. Jimmy sent it to me.

Q. Jimmy Bostic sent it to you?

A. Yes, sir.

Q. After you got down there, where did you stay?

A. I stayed at their house.

Q. When you say "they", who are you referring to?

A. Judy and Jimmy.

Q. About how long were you down there?

A. Four days.

Q. During the time you were down there, did you spend a lot of time with Jimmy or did you spend a lot of time with Judy?

A. Judy.

Q. More time with Judy than with Jimmy?

A. Yes.

Q. Did you meet anybody else down there that you recognize in the courtroom?

A. Eugene Beard.

Q. All right. Did you also meet Larry Ferguson down there?
[2613] A. Yes, sir.

Q. Now during the intervals that you saw Bostic down there, did you hear him make any statement about any criminal offense, anything of that nature?

A. Just one statement, you know, about the——

Mr. BINKLEY. I can't hear this witness.

The COURT. Speak up so the jury can hear you.

The WITNESS. He made one statement, you know, said something, he almost cracked up when he heard that they were trying to pin it on those guys that robbed the bank the same day they did, those other guys.

By Mr. KNIGHT:

Q. Now we need to clarify that a little bit. Said he almost cracked up when he learned about trying to pin something on somebody else, is that what you said?

A. Yes, sir.

Q. What did he say they were trying to pin on somebody else?

A. The Bordeaux Bank.

Q. Who did he say they were trying to pin it on?

A. Those two for that other bank that was robbed that same day.

Q. Did he say anything else about it other than that he almost cracked up about it?

[2614] A. I can't remember——

Q. Did he say how he felt about the fact that they were pinning it on someone else?

A. I can't remember.

Q. Did he express his feelings about that at all?

A. Just—just, you know, he laughed.

Q. All right. Now while you were down there, did you see anything that he had bought, Bostic had bought, that you took back with you when you left?

A. Tanks.

Q. Some tanks?

A. Yes.

Q. What kind of tanks were they, what approximate size were they?

A. As much as I can remember they were big, you know, to me, and they were heavy, that's all I remember.

Q. Do you remember the color of either one of these tanks?

A. Green was one of them.

Q. One—you remember a green one?

A. Yes.

Mr. KNIGHT. Mr. Marshal, could we have that exhibit again?

(Plaintiff's Exhibit No. 47 was brought into the courtroom.)

[2615] By Mr. Knight:

Q. Can you recognize either one of those as being the same as or closely similar to the tanks that oBstic bought in Florida?

A. This green one, but it didn't have this stuff on it.

Q. Didn't have this top part?

A. The hose, didn't have the hose on it either.

Q. Would you say that's the same tank?

A. I'd say, you know, a close resemblance of it, if it's not.

Mr. Knight. Thank you.

The Court. Now could the record show what she pointed to?

Mr. Knight. Let the record show that she pointed to Government Exhibit 47, the green tank that is a part of Government Exhibit 47.

The Court. The other one is not green.

Mr. Knight. That's right.

By Mr. Knight:

Q. All right. Now you have testified that you stayed down there about four days. How did you leave, or what kind of transportation?

A. Left in the Corvette.

Q. And who was in the Corvette?

[2616] A. Judy, Jimmy, and I.

Q. Was anything else in the Corvette?

A. Well, our suitcases and the tanks were in the back.

Q. And the tanks?

A. Yes.

Q. On the way back to Nashville, do you recall Bostic making any statement about money?

A. Except that he was low on cash.

Q. And what did he say he was going to do about that?

A. He had to get in touch with Gary about some business, Gary Ethridge.

Q. Did he say that in connection with the remark about the money?

A. No, he just said, you know, he had to—was running low on cash, and then later he said he had to get in touch with Gary about some business.

Q. Get in touch with Gary on some business?

A. Yes.

Mr. Knight. All right.

Mr. **Wilson**. I want to object to that, if Your Honor please, being hearsay and not in furtherance of the conspiracy.

The **Court**. Overruled.

[2617–2623] * * * * *

[2624] * * * * *

Mr. **Knight**. Olympia Linda Letos.

Mr. **Wilson**. May it please the Court. I have read the Jencks Act statement of this witness, and I find that the testimony contained in the Jencks Act statement is testimony that is hearsay, something from a man named Jimmy Jenkins. He's not a party to this conspiracy, and therefore, I'm going to object to any hearsay testimony that might have come to this witness from the man named Jimmy Jenkins. He's not charged, he's not indicted, and he's—there are no unnamed conspirators.

Mr. **Quillen**. We wish to join in that objection [2625] may it please the Court.

The **Court**. Well, I can't rule on the objection until I hear what the testimony is.

* * * * *

[2626] OLYMPIA LINDA LETOS a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. **Knight**:

Q. Linda, I'm going to ask you to speak up so these ladies and gentlemen of the jury can hear you. How old are you at the present time?

A. Twenty years old.

Q. Twenty years old?

A. Yes, sir.

Q. And what is your present residence?

A. 1643 West Gray Street, in Richmond, Virginia.

Q. Richmond, Virginia?

A. Yes, sir.

Q. Do you know any of the defendants in this case?

A. Yes, sir.

Q. How many of them have you met?

A. I have seen them all but—except for the wife, Mrs. Ethridge, I haven't seen her before.

Q. You have seen all of the defendants with the exception of Mrs. Ethridge, is that correct?

A. Yes, sir.

Q. All right, when did you first meet William [2627] Eugene Beard?

A. In Daytona Beach, Florida, at the Silver Sands Hotel.

Q. And whereabouts in the Silver Sands Motel was that? Was that inside?

A. It was in the parking lot of the Silver Sands Hotel.

Q. And approximately what was the date you met Mr. Beard?

A. It was the first part of May of this past year.

Q. The first part of May of this year?

A. Yes.

Q. Who else was present at that time?

A. Eugene Beard, Larry Ferguson, Jimmy Jenkins, Judy Sineath——

Q. Is Judy Sineath a friend of yours?

A. Yes, sir. Jack Logel and myself.

Q. What did you do on that occasion after you met them down there? Did you meet them through a mutual friend?

A. Yes, I met them through a mutual friend which is Jack Logel.

Q. And what happened that first afternoon?

A. Well, we went to their adjoining room at the Silver Sands Hotel, and it was supposed to be a party there, and——

[2628] Q. All right, whose room was this that you went to?

A. Patricia Beard's, Larry Ferguson's and also Judy Beard and Eugene Beard's room, and Jimmy Jenkins' room.

Q. All right. Did you spend a good deal of time with these people in the next few days?

A. Yes, sir, I did.

Q. Did you eventually leave Daytona Beach?

A. Yes, sir, I left with Larry Ferguson, Judy Sineath, Jimmy Jenkins and myself.

Q. All right, and approximately how long were you down there with these people?

A. Around a week.

Q. Around a week?

A. Yes, sir.

Q. During the time you were down there, you have testified you spent a great deal of time with them, is that right?

A. Yes, sir.

Q. Did you come to meet James Bostic while you were down there?

A. Yes, sir, I did.

Q. Do you remember approximately when you met him in relation to when you met these other people?

A. Yes, sir; around three days after I was there.

Q. Now as you were going over to this motel room [2629] and seeing these people, was there anything about the conduct of Mr. Beard or Mr. Ferguson which attracted your attention in particular?

A. Yes, they were very secretive in their conversations, they talked off to the side, and of course Jimmy Jenkins also, and I just couldn't understand what was going on. I was real inquisitive to find out why they had so much money and they didn't seem to be people that had some type of business or very fortunate people at all.

Q. Who was it that really had the money in that group?

A. Jimmy—I mean Larry Ferguson.

Q. Larry Ferguson?

A. Correct.

Q. Was he spending that money?

A. Yes, he was.

Q. Pretty lavishly?

A. He was, and he also gave money to Eugene Beard and he gave money to Jimmy Jenkins; he gave money to myself, I mean to me, and Judy Sineath, Patricia Beard.

Q. Do you have any idea of the amounts of money that he was giving to Jenkins or Beard?

A. Well, Eugene was holding a couple of hundred dollars for him, and of course I saw him give Jimmy Jenkins three fifty dollar bills.

[2630] Q. All right. Now you say that you met Bostic, you think, two or three days after you met these other people?

A. Yes, sir.

Q. Was there anything about Bostic that aroused your curiosity?

A. Yes, we were planning to go nightclubbing and I couldn't understand why Bostic wouldn't go, you know, him and Judy Farmer, and so I was real persistent about it, and then he finally told me that he didn't have any identification, that he couldn't drink, and at that time he was under the name of David Burton, and so later on, I—we talked, and——

Q. You and Bostic talked?

A. Yes, and Judy Farmer, and I told them that I figured there was some type of trouble, something they had been involved in, which—that part Jimmy Jenkins did inform me, but after I talked with Jimmy Bostic, he told me—I told him that I had some trouble three years ago, and so they later confided in me.

Q. Who do you mean by "they", when you say "they?"

A. James Bostic, Eugene Beard and Larry Ferguson.

Q. All right. Now did you, subsequent to talking to Bostic and telling Bostic that you had previously been in trouble, did you have any discussions down there at which Eugene Beard was present in which any statement was made that indicated where this money had come from?

[2631] A. A couple of days after I had met them, Larry Ferguson was trying to get in touch with Gary, which I now know as Gary Ethridge, on the phone. He was calling——

Mr. Wilson. I'm going to object, if Your Honor please, so the record will be clear.

The Court. I don't know what you are objecting to.

Mr. Wilson. I'm objecting to the hearsay testimony.

The Court. She hasn't said it was hearsay; it hadn't been shown yet.

Mr. Wilson. She said Ferguson was trying to get in touch with Gary.

The Court. And you say that's hearsay?

Mr. Wilson. Unless she saw it.

The Witness. I saw it.

The Court. Well, she says she saw it; overruled.

By Mr. Knight:

Q. Just state exactly what you heard Ferguson say, as best you can recall.

A. There were several of us there. I was sitting on the bed right next to the phone where Larry Ferguson was trying to get in touch with Gary.

Q. And did he say I'm trying to get in touch with Gary or words to that effect?

[2632] A. I heard him ask for Gary on the phone.

Q. All right, let me ask you.

A. He told the operator—excuse me.

Q. Was the Defendant Beard present at that time in the same room?

A. Yes, sir, he was, him and his wife Judy had just come back from the beach, they were there.

Q. All right. What did you hear Ferguson say over the telephone?

A. I heard Ferguson ask Gary if he would send the money to Daytona Beach, Florida, to the Western Union.

Q. Did he indicate how much money he wanted?

A. Yes, he wanted two thousand dollars.

Q. All right. Then after he made this request, what did he say after that?

Mr. Quillen. We object to anything that James Larry Ferguson said.

Mr. Knight. In the presence of his client.

The Court. Overruled.

By Mr. Knight:

Q. Go ahead.

A. He said he wanted the money sent there, and obviously what was——

Mr. Quillen. We object.

Mr. Wilson. Object to her comments.

[2633] Mr. Quillen. Object to her conclusions.

The Court. Just state what you heard.

The Witness. Yes, sir. Larry Ferguson turned around to me and Jimmy Jenkins and said, he can't send the money because things are hot in Nashville, and that they would find out——

Mr. Wilson. We object to anything that Larry Ferguson said, if Your Honor please. Anything Larry Ferguson said, he is dead, and we are cut off by the grave from repudiating it.

The Court. This is admissible on the ground that there is proof, prima facia proof at least, that he's a member of the conspiracy alleged in the indictment, and this would be a statement that would be in execution of the conspiracy, carrying it out.

Mr. Knight. I would like to state that there have been a series of objections to essentially the same conversation, much of them will be exactly this type of testimony, and our position is that they are statements in furtherance of the conspiracy.

The Court. I just said that.

Mr. Quillen. At this time, I renew my motion for a severance of count eight of the indictment on behalf of William Eugene Beard.

The Court. Overruled; go ahead.

[2634] By Mr. Knight:

Q. All right, Linda, I believe you were just testifying that Ferguson had turned to you and Jimmy Jenkins and said something; what was it he said?

A. He said that Gary didn't want to send the money to Daytona Beach, Florida, because it could be traced, and so he said that they would have to wait and drive to Atlanta and get in touch with Gary from there, so——

Q. Let me interrupt you there. Was this toward the end of the time that you were down there?

A. Yes, sir.

Q. Now earlier during this period of about a week, were you present at any discussions between Beard and Ferguson concerning activities in Nashville?

A. Yes, sir, I was. Larry Ferguson was speaking of the fact that they had business to attend to with Gary, and Eugene asked Gary—asked Larry Ferguson if he would get in touch with Gary and try to get him in on the action.

Q. Eugene Beard asked Larry Ferguson if he, Ferguson, would get in touch with Gary and try to get him in on the action?

A. Yes, because at the time he stated himself that he wasn't in on this—the Bordeaux—Bordeaux bank robbery, and he—I asked Jimmy Jenkins and Bostic, James Bostic, and Judy why he wasn't involved in this.

[2635] Mr. Wilson. Now here comes Jimmy Jenkins.

Mr. Knight. If it is an objection, I think it is valid.

The Court. Is this a statement made by Bostic?

By Mr. Knight:

Q. Was it a statement made by Bostic?

A. No, sir.

The COURT. Was it made in his presence?

The WITNESS. Yes, sir.

The COURT. It will be limited, admissible only to Bostic and limited to him.

Mr. KNIGHT. I was wrong about that.

By Mr. KNIGHT:

Q. Go ahead.

A. I was told in James Bostic's presence by Larry Ferguson that Eugene Beard had made a statement against someone before on another case and that was the reason why he wasn't able at this time to participate in their robberies, burglaries.

Q. Now did Beard make any, during the time he was talking to Ferguson, did he make any specific statements about getting in on the thing and so on, his abilities or anything of that nature?

A. He stated that he had some qualities that—something that he could do for them.

Q. Did he say what that was?

[2636] A. No, he didn't.

Q. You don't remember anything——

A. He said he could drive, I did hear this.

Q. He could be a driver?

A. Yeah, but the other part I don't remember.

Q. All right. Now while you were down there, was there one day you went over to Jimmy Bostic's house with some other people?

A. Yes, I did.

Q. Who all went over there?

A. There was Jimmy Jenkins, Larry Ferguson, Jack Logel, and Judy Sineath. That's all at the present.

Q. All right, and after you got over there, was there any discussion in the presence of Bostic as to what was going to happen?

A. Yes, sir, there was. Larry Ferguson, Jimmy Jenkins and Bostic were talking about the fact that they had to go to Miami to get some tanks at a surplus place.

Q. What kind of tanks did you understand them to be?

A. These tanks are supposed to be able to go through nickel-plated or head safe.

Q. Where did you get that information?

A. I heard them say this.

Q. What did you do? Did these people leave the [2637] Bostic residence? In other words, they said they were going to Miami; did anyone purport to go to Miami?

A. Yes, sir, James Bostic went and Jimmy Jenkins went and Larry Ferguson stayed with all of us girls.

Q. All right. Did Jenkins and Bostic subsequently return?

A. Yes, they did, but they had failed to get the tanks.

Q. Now——

A. At that time.

Q. Did you at any time while you were down in Florida see any tanks.

A. Once they opened up the trunk of the car when we were leaving.

Q. Who do you mean by "they"?

A. I'm sorry, James Bostic and Larry Ferguson and Jimmy Jenkins.

Q. They opened the trunk of a car; whose car was it?

A. It was James Bostic's car.

Q. What was in the trunk?

A. The tanks.

Q. All right. Did they tell you what use they intended to make of these tanks?

A. Yes, sir, we were supposed to—well, I was [2638] told by Larry Ferguson, Jimmy Jenkins and James Bostic that they had a job to take care of, and—which was supposed to be a bank, they told me, and it would be later on——

Q. All right. Now I believe you stated that you left Daytona Beach with James Ferguson, James Bostic and Judy Sineath, is that correct?

A. Left Daytona?

Q. Yes.

A. No, sir. Jimmy Jenkins, Larry Ferguson, myself and Judy Sineath left Daytona. We were to meet James Bostic at Flagler Beach.

Q. Did you meet him there?

A. No, he didn't come.

Q. All right. Where did you go from Daytona?

A. We left Daytona and went to Atlanta, Georgia.

Q. What was your purpose of going to Atlanta, Georgia?

A. That is where Larry Ferguson and Jimmy Jenkins were supposed to pick up the two thousand dollars that Gary was supposed to wire to them.

Q. How do you know, just to go back over that, how do you know they were supposed to meet him there?

A. I heard the conversation in the Silver Sands Motel.

Q. All right, what happened after you got to [2639] Atlanta?

A. We went to a place by the name of the Blue Lantern in Atlanta, and Larry Ferguson and Jimmy Jenkins went to the phone. They called Gary Ethridge collect——

Mr. WILSON. I object if she wasn't present.

By Mr. KNIGHT:

Q. Were you present?

A. I was present; I was standing right beside the phone.

Q. What did you hear?

A. I heard Larry Ferguson ask the operator for Gary Lee Ethridge's residence; he had the phone number, but he wanted the operator to get it for him, so he finally, I judged from the conversation, he had Gary on the phone, and Gary—he told Jimmy——

Q. Who is "he"?

A. Larry Ferguson.

Q. Larry Ferguson?

A. Told Jimmy during this conversation that Gary said that he could not send the money there, that it would be best for him to come to Chattanooga, Tennessee, at a service station which I can't remember the name, and meet him there.

Q. Meet who there?

A. Meet Gary Ethridge there.

Q. All right.

[2640] A. So we did, we went to Chattanooga, and we pulled up at the service station, and it was raining and Gary Ethridge wasn't there, so we waited for around thirty minutes, and Larry became—Larry Ferguson became impatient, so he went to the phone, the pay phone which I did not hear this conversation.

Q. All right.

A. But——

Q. What did he say when he got back to the car?

A. He got back to the car and said—and then he said that Georgia Ethridge had told him that Gary—Gary Ethridge and Sammy Cole were on their way, they would be there shortly and to wait. So we did. Gary Ethridge came, Sammy Cole came.

They pulled behind us, their car behind us, which was a Mustang, it was red at the bottom and white at the top. I don't remember the year of the car.

Q. All right.

A. And Sammy Cole got out of the car for a minute or so; Larry Ferguson went back to the car and Jimmy Jenkins also.

Q. All right.

A. As I was looking, Gary Ethridge handed him a bag which I found out later to be money. Larry Ferguson came back to the car, he brought the money with him, and he handed it to Jimmy Jenkins, and I, to count for him. He said that he [2641] didn't—he said even though Gary is such a big man, this is the way he expressed it, I still don't trust him, so we counted every bit of the money. It was in small bills, twenties, tens, and ones and fives.

Q. And how much was there?

A. Two thousand dollars.

Q. Did Larry Ferguson at that time make any statements about what he was supposed to do with that money or any part of that money?

A. Yes, sir, he did. When he got back into the car, he said that Gary said he was to buy the walkie-talkies that they were going to use in Bowling Green or Orlinda right outside of Bowling Green, for you know, the bank robbery. He was supposed to buy that out of the money and his expenses.

Q. All right. Now where did you spend the night that particular evening?

A. We drove from Chattanooga to Nashville, Tennessee, and we stayed at the Alamo Plaza.

Q. Do you remember of your own recollection exactly what date this was that you went through Chattanooga?

A. It was around May the—between the 10th and the 15th, this I'm sure of, I'm not exact.

Q. Do you remember about what day of the week it was?

A. It was on a Friday night when we got there.

[2642] Q. By there, you mean Nashville?

A. Yes, sir, I'm sorry.

Q. So you got back to—you got to Nashville Friday night between the 12th and the 15th of May; is that correct?

A. Yes, sir.

Q. You stayed at the Alamo Plaza Motel and what happened the following day?

A. Well, before the following day, Larry Ferguson and Jimmy Jenkins, Judy Sineath and myself went to the hotel, Larry Ferguson left and went to his home, and it was within this time we were waiting, you know, for Larry to come back, so when he did, we left and drove to Bowling Green, Kentucky.

Q. All right, and when did you arrive in Bowling Green, Kentucky?

A. It was—the next day, Saturday.

Q. It was on a Saturday, would it have been what time of day approximately?

A. It would have been around—the afternoon, late afternoon.

Q. Sometime in the afternoon?

A. Yes, sir.

Q. What did you do after you got to Bowling Green? What was the first thing you did?

A. The first thing we did, we went to—I think [2643] it was the Bypass Motel. I'm not sure of this, there were two motels, and we only stayed at one for about five minutes.

Q. Do you remember the name of both of those motels?

A. The Bypass and the Way something or other, I can't remember.

Q. But you did stay in two of them and registered in one first, is that right?

A. Yes, sir.

Q. And how long did you stay in the one you registered in first?

A. We stayed there around forty-five minutes, and then we left. Jimmy Jenkins came and picked up Judy Sineath and myself and we went to the Holiday Inn on the second floor where Eugene Beard was.

Q. Now, Linda, was anybody surprised to see Eugene Beard up there, or did you know he would be there?

A. We knew he would be there.

Q. How did you know that?

A. Well, because Larry Ferguson and Jimmy Jenkins told us——

Mr. Quillen. We object to that, what they were told about it.

The Court. Overruled.

By Mr. KNIGHT:

[2644] Q. Go ahead.

A. He told——they told us, Larry Ferguson and Jimmy Jenkins, that Eugene Beard was supposed to meet them there, that was part of the plan.

Q. All right. After you got there that afternoon, did you make any purchases?

A. Beg your pardon?

Q. Did you buy anything?

A. That afternoon, yes, we did. We went to the Holiday Inn, we stayed there for a little while, then we left to get the walkie-talkies, because Gary Ethridge, he was supposed to have been there by that time, hadn't come. Eugene went to make the reservations downstairs for Gary because Eugene said that Gary didn't want to be seen as much as—as less as possible, he didn't want to be seen.

Q. And then you say you went out—after this you went out and bought some walkie-talkies?

A. Yes, sir.

Q. Now after you had found the walkie-talkies, did you see anyone else up there who was involved in this case?

A. Yes, sir, I did. I saw James Bostic, and——

Q. Who was he up there with?

A. With Judy Farmer and Shirley, a little girl named Shirley.

Q. Shirley Burton?

[2645] A. Yes, sir.

Q. Did they come over to your room, or did you go over to their room?

A. We went over to their room.

Q. All right. And after you had been over there a while, where did you go and who went?

A. We went back to Eugene Beard's room, and everyone—they were preparing to go to Orlinda.

Q. Now who was present in the room at the time you are talking about?

A. Eugene Beard, Jimmy Jenkins, Larry Ferguson, and James Bostic.

Q. Now you say you—they were preparing to go to Orlinda, do you recall what was said about Orlinda, what comments were made that afternoon?

A. Yes, sir, James Bostic said that this bank was a cinch because he gave me the impression that he had been in that area, and knew his way around.

Mr. BINKLEY. Objection to her impression.

The COURT. Not the impression, but what he said.

The WITNESS. He said he knew a person who tried that bank, but they didn't have those tanks.

By Mr. KNIGHT:

Q. Didn't have the tanks——

[2646] A. That would go through a nickel head safe.

Q. Do you recall him saying anything about the police situation around Orlinda?

A. Yes, he said there was only one cop—policeman. I'm sorry—patrolling the area, and didn't have to worry about him.

Q. All right. Did they say anything at that time about anybody else who was going to participate in this burglary?

A. Yes, sir, they said that Gary Ethridge was going along, and so would Sammy Cole, and they said that Gary Ethridge was going to sit in the car with one of the walkie-talkies—not directly in front of the bank, but a little ways from it so that he could tell when the policeman drove up close to the bank, he could notify them in case something happened.

Q. Did you at any time while you were up there, did you see Gary Ethridge?

A. Yes, I did. I was sort of nosy, if you want to know the truth, I still—this was all new to me. I saw Gary Ethridge, and Sammy Cole get into their T-Bird that they had there.

Q. What color T-Bird was that, do you remember?

A. It looked blue to me, but of course it was dark, so I'm not really sure.

[2647] Q. All right. About what time of day was it, just about when was it that you saw them up there?

A. It was late that Sunday afternoon when I saw him.

Q. All right, go ahead.

A. So, well, I saw the two of them get into the car, and of course Larry Ferguson went out to the car with them, but you were asking me what other time I saw him also.

Q. Yes, the first time you saw him up there.

A. He was up on the second floor, directly in front of Eugene Beard's room.

Q. Now what motel are we talking about?

A. Holiday Inn in Bowling Green.

Q. Eugene Beard's room was on the second floor; is that right?

A. Yes, sir, I think it was 211, I'm not sure.

Q. All right.

A. But he was standing on the porch right in front of the room, talking to Jimmy Jenkins, and then Jimmy Jenkins came back into the room, and Larry Ferguson went out there, and then Eugene Beard, I mean Eugene Beard talked to him also, this was after I came out and went down to the lounge.

Q. Did Mr.—were you in a position where Mr. Ethridge could see you? Could he see you?

A. He saw me when I opened the door.

Q. What was his reaction?

[2648] A. He moved away from Jimmy and moved down to the other end, as if he didn't want to be seen with him.

Q. All right. Now later that same day, did James Bostic leave the vicinity of the motel?

A. Later that day—yes, he did. He left with my girl friend, Judy Sineath.

Q. Did he state where he was going?

A. Yes, sir, he said he was going to Orlinda, and he was going to take Judy with him, so after they had left, which is James Bostic and Judy Sineath, Eugene and Larry Ferguson and Jimmy Jenkins told me where they had gone, that Bostic had gone to case the bank.

Q. Now approximately—were you there when Bostic came back that evening?

A. Yes, sir, I was.

Q. Approximately how long was it from the time he left until the time he came back, do you remember?

A. Close to three hours.

Q. Where did you spend that period of time? Where were you?

A. I was with Larry Ferguson, Eugene Beard and Jimmy Jenkins.

Q. During that period of time, was there any discussion by these individuals relating to this burglary?

A. Yes, they were talking about what they had to [2649] do; they wanted to wear dark clothes and they had forgotten to get the gloves which it was too late to get.

Q. What did they do about them?

A. They wore Eugene's socks.

Q. On the hands?

A. Yes, sir.

Q. How did Eugene react to that?

A. He didn't like it very well, because he didn't have any more.

Q. Do you recall anything else that was said during that interval about the burglaries, about what they were going to wear or anything?

A. Yes, Jimmy Jenkins and Larry Ferguson and Eugene Beard said they were going to put something on their face to darken it so it wouldn't be very noticeable in the light, and that's about all they said.

Q. Was anything said between you and Ferguson about Ethridge's role in this burglary at that time?

A. Yes, sir, he—Larry Ferguson—Eugene was present, he didn't contribute to this conversation, but Jimmy Jenkins and—they told me that Gary was the person that cased out these places for them, that he let them know if they were safe, what time would be the best, and all of this.

Q. Did they——

Mr. Wilson. Who is they, let's identify.

[2650] The Court. All right, identify who that was.

Mr. Knight. Your Honor, we have identified who was in the room.

The Court. Do it again, won't hurt anything.

By Mr. Knight:

Q. Who was in the room at this time?

A. Larry Ferguson, Jimmy Jenkins, Eugene Beard, myself, at the time we were talking about this.

Q. Go ahead with your statement. My question——

Mr. Wilson. I want to know who was talking.

The Witness. I never got around to that.

By Mr. Knight:

Q. Who was doing most of the talking?

A. At the time Larry Ferguson was talking.

Mr. Wilson. I object to anything Larry Ferguson said, he being dead, and we can no longer repudiate it.

The Court. Overruled.

By Mr. Knight:

Q. All right. Linda, to repeat the question, what did Larry Ferguson tell you about Gary Ethridge's role in this burglary?

A. He said that he was the big man in this bank robberies and burglaries, and that's how he said it, that he was the big man over it all, and that he supposedly cased out [2651] all the places ahead of time, and he checked to see if there were any policemen patrolling the area, and he let them know the safest time to go in, and just—he looked out for them if they got in any trouble, Larry said that he was the man to get them out no matter what the cost was, just to keep their mouth shut is what he said.

Q. Did Ferguson or Beard at that time or previously tell you exactly what Gary Ethridge was supposed to do in connection with this burglary?

A. Yes, he was supposed to drive the car and he was supposed to park up the road——

Mr. QUILLEN. We object, because this is Ferguson or—we are entitled to know which one.

By Mr. KNIGHT:

Q. All right, when this statement was made, who made it, and who else was present?

A. This statement was made earlier before the last part we were talking about when Eugene Beard was present and James Bostic.

Q. And who made the statement, do you remember?

A. Wait a minute, I've forgotten what I just said.

Q. I don't believe you said who made the statement.

Mr. QUILLEN. Let her straighten out what you just said if you remember it.

The WITNESS. Could you repeat the question?

[2652] Q. Who else was present and who made the statement about Gary Ethridge's role in this burglary?

A. Once Eugene Beard was there, James Bostic, Larry Ferguson, and Jimmy Jenkins.

Q. Beard, Bostic, and Ferguson were present?

A. Yes, sir.

Q. Now, can you recall who it was telling you what Gary Ethridge's role was supposed to be? What Gary Ethridge was supposed to do, which of these people specifically told you, or were they all telling you about it?

A. Well, Eugene didn't do very much—he didn't talk very much to me, because he didn't like me, but Bostic talked with me; Jimmy Jenkins talked with me, and Larry Ferguson talked with me.

Q. And these statements were made in the presence of one another?

A. Yes, sir.

Q. While you people were together?

A. At all times just about.

Mr. Quillen. Still hadn't identified who was making the statement.

The Court. Apparently she's done the best she can and identified the parties present and stated it was a running conversation.

Mr. Quillen. If Jimmy Jenkins made it, he's [2653] alive and not charged as a co-conspirator.

The Court. Well, he may have made some of it, but I gather from her testimony there were several contributors to the conversation.

By Mr. Knight:

Q. All right, Miss Letos, I'll ask you the question again, what was said during this conversation about Gary Ethridge's role in this burglary?

A. They said——

Mr. Wilson. Are we going to repeat?

Mr. Knight. Your Honor sustains his objection, and they continue to object to the same question.

The Court. It's already in, she's testified as to Ethridge's role, if that's what she's talking about.

Mr. Knight. She was in the midst of answering the question.

The Court. Did you complete your answer?

The Witness. I didnt—I completed the question, but I didn't answer a question as to who said it.

The Court. I thought you did; go ahead.

The Witness. James Bostic was talking, contributing to the conversation; Eugene Beard was contributing to the conversation; Larry Ferguson was contributing; and James Jenkins.

[2654] By Mr. Knight:

Q. All right. Now calling your attention back again to the Sunday evening while Bostic and your friend Judy Sineath went to Orlinda and you were in the motel room, you stated that you did have a conversation with Larry Ferguson with respect to Gary Ethridge?

A. Yes, sir.

Q. Do you remember saying anything to Ferguson at that time about it?

A. Yes, I did. I told him he was rather stupid if he was going to do something like that——

Mr. Wilson. We object to her opinion.

Mr. Quillen. Said it to Larry Ferguson, and he's dead.

The Court. And in the presence of these other people. Overruled.

The Witness. The only reason I told him this is because I felt sorry for Larry. I told Larry that I thought he was rather stupid to give Gary Ethridge any money for casing out a place when they could see all—they could find out all they wanted to themselves and Gary—and Larry still felt safe, because he said he had Gary backing him, that that was the whole thing behind it.

By Mr. Knight:

[2655] Q. All right.

A. If he got in any trouble.

Q. All right. Now do you recall approximately what time James Bostic came back that evening?

A. Yes, it was almost midnight, because they were late getting back, Judy Sineath and James Bostic, because they were supposed to go to Orlinda right at twelve o'clock, they wanted to get there at midnight.

Q. All right. Who left after Bostic got back, who left?

A. Well, before Bostic got back, we, James Jenkins, Larry Ferguson, and Eugene Beard and myself, went down to the car, and this is where I'm confused, I can't remember which car they moved the tanks from, but they moved the tanks out of one of the cars and put it in the other one in the back, one they were going to take with them. They were preparing to go.

Q. Did you see them when they left for Orlinda?

A. Yes, sir, I did, looked out the window, and Gary Ethridge, Sammy Cole and Larry Ferguson rode in the same car.

Q. What car was that, if you know?

A. His T-bird.

Q. Whose T-bird?

A. Excuse me, Gary Ethridge's T-bird.

[2656] Q. And who else went? Who else did you see leave?

A. Eugene Beard, Jimmy Jenkins and James Bostic.

Q. When is the next time you saw Larry Ferguson, James Bostic, Jimmy Jenkins, and Eugene Beard?

A. It was early the next morning, real early the next morning.

Q. What kind of condition were they in when you saw them the next morning?

A. They had mud all over them and poor Larry had lost his shoes.

Q. Larry had lost his shoes?

A. Yeah.

Q. Were they talking to him about that?

A. Yeah, they were kidding Larry, because he had lost his shoes, and he said they were real nice ones, and he had spent quite a bit of money for them.

Q. Did they tell you anything about what had happened to them?

A. Yes, they—Eugene Beard, James Bostic, and Larry Ferguson, Jimmy Jenkins, told me that they had went into the bank, all of them were talking at one time, and that they were getting ready to put the torch on the safe when a light came on upstairs, and then they told me that they heard a voice, Eugene told me this, that he heard a voice upstairs say, we've got you now, and so they said they just ran [2657] as fast as they could, and how come they were muddy, because they ran through the mud and it was all messy from the rain the night before.

Q. Did you later leave Bowling Green with some of these people?

A. Yes, sir, I did.

Q. How long after this incident you have just talked about did you leave up there?

A. We stayed one more day.

Q. All right, and then you drove back to Nashville?

A. Yes, sir.

Q. What happened, without going into any details, what happened to Larry Ferguson and Eugene Beard after you got back to Nashville?

A. After we got back to Nashville, we checked into the Alamo Plaza, and we made plans to go nightclubbing, so we went to this A Go Go Club on one of the main streets here in Nashville, and Gene Beard was with his wife. I was told by Larry Ferguson, and Bostic, and James Bostic, and—anyway, we went to this A Go Go Club, and Bostic met us there, and Eugene Beard—Larry Ferguson left to—he was trying to go over to Patricia Beard's house when the car—he hit another car, and so he came back to the A Go Go Club and he told us that he had hit a car and left it there, and for us to say he had been there all of that time.

[2658] Q. All right.

A. Which we did.

Q. Let me ask you this. Without going into too much detail, was there a time after you arrived in Nashville when you were given a telephone number?

A. Yes, sir.

Q. And what were the circumstances behind that?

A. Larry Ferguson had gotten locked up that night for that hit-and-run incident, and Jimmy Jenkins had gotten locked up, and Jimmy Jenkins gave me the number and told me to call Gary and tell them that they were in trouble, because Jimmy had shot into a restaurant at a waitress, and that they needed help; they didn't have any money, they had spent all of the money they had on the tanks and the trip up there.

Q. All right, and did you—what happened after you called Ethridge?

A. I didn't call Ethridge at that time.

Q. Did you subsequently meet Ethridge?

A. Yes; I did.

Q. Who else was with you?

A. That next day—I mean later that afternoon, I'm sorry—yes, Jimmy Jenkins called Ethridge from Patricia Beard's house, I was there, and he asked Gary if Gary thought he could help him with his court expenses the next day with his lawyer, and he told him that the FBI had talked with me that [2659] night before, and they were questioning me, and that he wanted Gary to talk with me and see if he could find out anything about it, so Gary—I talked with Gary on the phone, and Gary said that he wanted me to come with Jimmy, and they were going to meet me later that afternoon, later that night, so

Jimmy Jenkins and I went over to Jimmy Jenkins' sister's house and Jimmy Jenkins called Gary Ethridge again, and Gary Ethridge told him to meet us in the parking lot of an apartment project like.

Mr. WILSON. I object to what he told her.

The COURT. Sustained. You may state what happened as a result of a telephone conversation.

The WITNESS. Beg your pardon?

The COURT. You may state anything that happened as a result of this telephone conversation, but you couldn't state what Gary Ethridge said over the telephone; that is stricken, that part of it.

By Mr. KNIGHT:

Q. Just state what you did.

A. Yes, sir, I'm sorry. We went to the parking lot of the apartment project, and Gary Ethridge met us there, we got out of Jimmy Jenkins' sister's car and got into Gary Ethridge's car. It was a fairly new car, and I sat right next to Gary and Gary—first Jimmy talked with him about the fact that he needed money for a lawyer for that trial and all, [2660] and then Gary started asking me questions about what in the world had happened, why did the FBI want to talk to me, did they ask any questions about the Bordeaux bank, and Orlinda bank; he wanted to know who were the people that they asked me about. He said had anyone made a statement. He asked me what type of statement was made, what did the statement say. I told him that all I knew, they just seemed—the FBI seemed to know everything, and he said, well he was worried, and told Jimmy Jenkins that he was worried, that someone had been giving some type of information about the banks.

Q. All right, he was concerned about that fact. Did he make any statement at that time about what he would do about that fact?

A. He said that he had an awful lot to lose, and he would blow somebody's head off if they messed him up, you know, because he said he had a nice home and the pizza place and he wasn't going to lose it for somebody ratting on him is the expression he used.

Q. And he said he would blow someone's head off before he would lose it?

A. Yes, sir.

Q. All right. Do you recall shortly after that being in a car with Eugene Beard in Nashville?

A. Yes, sir, I do.

Q. Who else was in the car at that time?

[2661] A. This was earlier that day, that same day that I talked with Gary. Eugene came over to the bondsman company where Jimmy Jenkins and myself and Patricia Beard were, and he gave us a ride out to his house. On the way from there, I mean to his house, he was asking me what the FBI had said to me, and I told him the same thing—do you want me to repeat it?

Q. No.

A. I told him the same thing that I told Gary, and I told him that I figured they had a statement, and he said that he didn't think that a statement had come from Leroy Bracey, that he said he knew that it was someone who had been up there more recent and turned around to me. So he hasn't liked me all of this time anyway, so Jimmy Jenkins didn't particulary appreciate the way he was talking to me, and he started insinuating in his remarks that I had talked with the FBI, and he said he'd blow my brains out if I had, so that was that for the day.

Q. That was that?

A. I didn't speak to him any longer.

* * * * *

[2662–2671] * * * * *

[2672] December 1, 1967

Fourteenth Day of Trial

(Whereupon, at 9:15 o'clock a.m., Court was reconvened pursuant to the adjournment and the following further proceedings were had in the presence of the jury:)

* * * * *

[2673] OLYMPIA LINDA LETOS (Resumed) * * *

CROSS EXAMINATION

By Mr. Quillen:

* * * * *

[2674–2683] * * * * *
[2684] * * * * *

By Mr. QUILLEN:

Q. Can you repeat for us this morning, Miss Letos, about what you told us yesterday, about what occurred in Daytona Beach, Florida?

* * * * *

The COURT. You want her to recite everything she said yesterday, everything she said, without the assistance of the question?

Well, go ahead and state as briefly as you may the substance of what happened in Daytona Beach.

The WITNESS. I was in Daytona Beach. I had arrived there around a week before I met the defendant Eugene Beard and James Bostic, and the deceased Larry Ferguson, and Jimmy Jenkins.

I met them through a man by the name of Jack [2685] Logel. He took Judy Sinneath and I to the Silver Sands Hotel. He wanted us to go there, because they were having—suppossed to be having a party. We went there. We talked—I met everyone in the parking lot. They invited us up to their room or suite or whatever you want to call it, and while I was there, the first day or so, I knew that there was something very conspicuous about them, very secretive, and of course I listened to the conversations very closely.

I knew that they were not people that were rich, or they couldn't very well—my opinion—afford to splurge like they to me—I mean, excuse me—Larry Ferguson, he stated to me were unless there was something going on illicit, and Fish stated that he had business transactions in Nashville, and—within this time, a couple of days after I met them, I was over there again, and James Bostic was over there, and Judy Farmer, and Jimmy Jenkins, Eugene Beard, Judy Beard, Patricia Beard, Judy Sinneath, all of us were in the same room together.

Bostic—I mentioned to him—I asked him if he was going nightclubbing with us that night, because we had made plans earlier to go, and he said that he couldn't go, that he didn't have any identification. I asked him how old was he once. and that was [2686] never mentioned. I had no idea he was as young as he is, and later on, they—we talked about me for a while. I told them that I had some trouble in my younger—quite a while ago, and so then he confided in me, the two of them, Judy Farmer and James Bostic, they told me that he was an escapee from some place, which I thought was a detention home or something like that. And he told me that they had—that he was involved in this business transaction.

Right after that—let's see. Larry was trying to get back to Nashville, so this girl that was present from Canada was on the phone trying to get reservations for Larry to come back to Nashville.

Right after that, he got on the phone and called Gary, which now I know is Gary Ethridge, and—during this conversation on the phone, he turned around to Jimmy and he said that things were hot in Nashville, that he couldn't fly, it wouldn't be wise, and that Gary didn't particularly want him to fly; and also—before him—yeah right after that, Gary—he asked Gary about wiring the money to Daytona, and he told Jimmy that Gary didn't want to do that.

So Larry turned around to Jimmy again, and he told Jimmy that—and he was talking to Jimmy Jenkins and Eugene Beard and Bostic, and he said that they were [2687] going to—that Gary was going to mail the money to him in Atlanta, Georgia.

So right after that, we left and went to James Bostic's house, and Judy Farmer's, and at this time, I found out that they were going to—between this time, I found out that they were going to Miami to buy tanks, which I knew as torches, and so I was curious about what they were for, and what they could do, and I was told that they could go through a nickel-plated safe, a nickel head safe, and so—anyway, we stayed out there, Judy Farmer and myself stayed at James Bostic's house——

Mr. Binkley. May it please Your Honor, I'd like to object to this.

The Court. Well, apparently you don't agree with your co-counsel.

Mr. Binkley. We, if Your Honor please—I wasn't in favor of trying the case together to begin with, and can't stop.

The Court. That's already been decided.

Mr. Binkley. Well, I just feel that——

The Court. What are you objecting to?

Mr. Binkley. I'm objecting to her going over testimony that has been testified to before, and I would just like to state to the Court that Mr. Quillen's [2688] handling his own case and I'm having to sit here and being hurt by it, and if this is going to be allowed——

The COURT. Let's don't get into that now, I've already ruled that this would be a joint trial for obvious reasons.

Mr. BINKLEY. I feel like——

The COURT. If he wants to try to cross examine the witness in this way, don't try to create here a situation to back up your motion for a severance. There's nothing wrong with this cross examination if that's the way he wants to do it. Don't be making objections to build up a record.

Mr. BINKLEY. I'm not making——

The COURT. It sounds that way. You made no objection when he proposed this line of questioning. He said ten minutes ago that he wanted the witness to go over the whole thing, and no objection was made by any counsel.

Mr. BATEMAN. I have no objection to the testimony, but I do want to object to Your Honor's reference to co-counsel.

The COURT. I'll modify that. You are co-counsel in the sense that you are on the defense's side of the table, but each defendant is separate and distinct, and must be tried separately and distinctly. You are [2689] right about it.

* * * * *

By Mr. QUILLEN:

* * * * *

[2690–2699] * * * * *

[2700] * * * * *

Q. Now in your statement to the—here yesterday, [2701] who was it you said had obtained these tanks and this equipment?

A. Who purchased them?

Q. Yes.

A. Or rented them?

Q. Yes.

A. James Bostic and Jimmy Jenkins went to get the tanks.

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[2702–2761] * * * * *
[2762] * * * * *

REDIRECT EXAMINATION

By Mr. **Knight**:

Q. Miss Letos, Mr. Wilson, I think, made a reference to one of the statements you gave the FBI, which [2763] he paraphrased that statement as being that you said you didn't know how much money Gary had given Fish, because he put in under the floor board of the car.

Now I'll read you the report, I assume this is the statement Mr. Wilson is referring to:

"After Fish got back in the car, he had a wad of money that Gary had given him," and then you said, "he hid it under the front floor mat, and we came on to Nashville."

Now I find nothing in that statement that indicates that you——

Mr. **Wilson**. Object to this.

The **Court**. Ask her if that is the statement.

By Mr. **Knight**:

Q. Is that the statement you made?

A. Yes, sir.

Q. Was there anything in the statement that you made at that time to the effect that you didn't know how much money Gary had given Fish?

A. At that time I made that statement, yes, sir.

Q. You did make the statement that you didn't know how much money you had given him?

A. Yes, sir.

* * * * *

[2764–2793] * * * * *
[2794] December 4, 1967
(Fifteenth Day of Trial)

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[2795–2801] * * * * *

[2802] * * * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

* * * * *

[2803] * * * * *

[2804] * * * * *

CHARLES BOBO (Recalled) * * *

CROSS EXAMINATION

* * * * *

[2805–2811] * * * * *

[2812] * * * * *

REDIRECT EXAMINATION

By Mr. Merritt:

Q. Now, Mr. Bobo, Mr. Wilson just read you a part of your grand jury testimony. The next question I asked you after you said you and Ethridge had fallen out, I'll ask you if the next question wasn't, by me to you in the grand jury was this:

"But if you have fallen out, why would Ethridge be trying to get you to do that? Have you fallen out since that time?"

And your answer to that was:

"Since that time."

Is that right?

A. That's right.

Q. Question:

"Since he tried to get you to do this, in other words in the last couple of weeks?"

Your answer:

"Yes, sir, that's right."

Is that right?

[2813] A. That's right.

Q. Question:

"Well, the conversation you're talking about on the telephone is a true conversation?"

Your answer:

"That's right, and everything I've said is true."

Is that what you said?

A. That's right.

The Court. What is the date of his appearance before the grand jury?

Mr. Merritt. September 26, 1967.

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[2814-2816] * * * * *

[2817] * * * * *

HENDERSON HILLIN, JR. (Recalled) * * *

DIRECT EXAMINATION

By Mr. Knight:

* * * * *

[2818] Q. During the course of investigating this case, have you had occasion to interview Mr. William——

Mr. Quillen. Objection, if the Court please, they are going to introduce something about an interview with my client. I think it's something that the Court should hear out of the presence of the jury, and I might say it runs the risk of being very prejudicial.

The Court. You expect to lay the groundwork for this?

Mr. Knight. Yes, Your Honor, I expect to ask Mr. Hillin what advice he gave Mr. Beard, and what Mr. Beard's reaction was.

The Court. Do you have any question about that, Mr. Quillen?

Mr. Quillen. Yes, sir, it was not an intelligent waiver anyway.

The Court. Hadn't we gone into this once before?

Mr. Quillen. Not with this witness.

The Court. All right.

Well, let the jury be excused.

(Whereupon, the jury was excused from the court room, and the following further proceedings were had in the absence of the jury:)

[2819] The Court. All right, go right ahead.

Mr. Knight. Now, Your Honor, we have a series of interviews, I would say five to six to seven interviews extending from June through September, October.

The Court. Yes.

Mr. Knight. Perhaps if Mr. Quillen has an objection to one of these interviews, we could cover that or the alternative would be to conduct a full examination of Mr. Hillin about all of these interviews which I think would take a good deal of the Court's time.

The Court. Well, I'm just interested in knowing if he complied with the Miranda regulations or rules.

Mr. Knight. All right.

By Mr. Hillin:

Q. Mr. Hillin, how many times did you interview Mr. Beard?

A. Seven times during the period May–October, seven.

The Court. May to October?

The Witness. Yes, sir.

By Mr. Knight:

Q. On each of these occasions, did you advise him of his constitutional rights?

A. Yes, sir.

[2820] Q. What specifically, what advice did you give to him?

A. During the—each interview he was furnished with a written statement of his rights and a waiver on the same page of these rights, which he read on each occasion, and though he did not sign any of these forms, indicated for the most part that he understood what his rights were and was willing to talk with the FBI.

Q. All right. And were most of these statements in the form of—contain many, many statements exculpating him from guilt, were they explanations and statements of that kind in many respects?

A. That is correct.

Q. All right.

The Court. What specifically did you give him in the way of advice? What does this form contain?

The Witness. Could I show you the form, Your Honor?

The Court. Yes.

(The document was handed to the Court.)

The Court. As I understand you, he read this form which contains the advice as to his rights, and in each instance stated that he did not wish to sign it.

The Witness. That is correct, sir.

[2821] The Court. Did he make any statement as to whether or not he understood his rights?

The Witness. Yes, sir, he indicated that he understood his rights and was willing to talk with us.

The Court. Was that true on each occasion that he stated he was willing to talk to you?

The Witness. That is correct, sir.

The Court. Let this be filed—this is a—

Mr. Hillin. That's the interview on June 7th.

The Court. Were the other forms shown to him the same as this one?

The Witness. That is correct, sir.

The Court. Let this be filed as the Court's Exhibit.

Mr. Hillin. May I also state for Your Honor's information, as we present this form, we don't just drop a form, we tell him this is a form containing your constitutional rights, that he should read it and understand it.

The Court. Have I filed an exhibit before?

The Clerk. Yes, if Your Honor please. This would be Court Exhibit 2.

(Court's Exhibit No. 2 was marked for identification and filed.)

[2822] The Court. Any further examination?

Mr. Knight. I would like to ask him another question.

By Mr. Knight:

Q. Was there an occasion that Mr. Beard gave you some general information, but stated that he didn't want to go into detail about that situation?

A. Yes, there was.

Q. So he did distinguish what he was willing to say about it in general terms, but not specific detail?

A. That's right, and during that portion the interview was ceased, we didn't go into that portion.

Q. After he made the general statements and didn't want to go into the details?

A. Yes, sir.

Q. Was that in connection with the Orlinda Bank burglary?

A. Yes, sir, that's correct.

The Court. All right, Mr. Quillen, cross examine, if you want to.

CROSS EXAMINATION

By Mr. Quillen:

Q. Mr. Hillin, you say you just handed him the form for him to read, is that right?

[2823] A. That is correct.

The Court. No, he didn't say that, said that this statement, this form contained a statement as to his constitutional rights, I believe, isn't that what you said?

The Witness. Yes, sir, this is a form containing your rights, constitutional rights, and we want you to read it.

The Court. Did you tell him that's what it was?

The Witness. Yes, sir.

By Mr. Quillen:

Q. And you handed that to him to read and interpret for himself as best he could?

A. I gave it to him to read, yes, sir.

Mr. Quillen. May I see it?

The Clerk. Yes, sir.

By Mr. Quillen:

Q. Of course you do not know whether William Eugene Beard read and understood that fully, do you?

A. I know that he can read, sir.

Q. You do not know though his ability to understand what he does read, do you?

A. Yes, sir, I understand from checking the records that he has a very high intelligence.

Q. Now, do you know whether or not he's had any [2824] legal training?

A. Do I know if he had any legal training?

Q. Yes.

A. No, I do not know.

Q. Now, do you know—did you advise him at the time you were interviewing him that he was running the risk of being charged with conspiracy?

A. No, I did not mention the word "conspiracy".

Q. Now I believe your first interview of Mr. Beard was conducted on June 5, 1967, is that right?

A. No, sir.

Q. When was the—did you take any statement from him sometime prior to that?

A. I talked to him before that.

Q. When did you talk with him?

A. I talked to him on May 17, 1967.

Q. Did you prepare a memorandum of—well, at that time, he did not give you any information, is that right?

A. No, sir, he did not.

Q. He was not in custody at that time, was he?

A. No, sir, he was not.

Q. Now when did you next interview him?

A. I interviewed him on—I saw him again on June the 5th, had a brief interview with him on June the 5th, [2825] and interviewed him again on June the 7th.

Q. And that interview, at the time though of the June 5th did he?

A. No, sir, he did not.

Q. And that interview, at the time though of the June 5th interview, he was in custody, was he not?

A. Yes, sir, he had just been taken into custody.

Q. Here in the Marshal's office?

A. No, sir. No, sir.

Q. Did you conduct that interview here in the Marshal's office?

A. I did not.

Q. Did you conduct an interview with him on the 7th of June?

A. That is correct.

Q. Was that here at the Marshal's office?

A. That is correct.

Q. And I appeared on the scene at that time and we made it know to you that I was going to represent him, is that right?

A. No, sir, that is not correct.

Q. What did we tell you?

A. You didn't show up that day.

Q. When did I show up?

A. You showed up on June 8th.

[2826] Q. All right. Now what information did he give you on the 8th of June—I mean did he give you information on the 7th of June?

A. That is correct.

Q. He was in custody though at that time?

A. That is correct.

Q. And no mention was made of the—at that time that he might possibly incriminate himself to the extent of having knowledge of a conspiracy?

A. Conspiracy was never mentioned.

Q. And on June the 8th, though, I did appear and make known to you that I was going to represent him, is that right?

A. That is correct.

Q. And did you continue your interview after I made that information known to you?

A. I interviewed him after you had left.

Q. Did we state to you or did I state to you that he did not desire that—that I was advising him not to make any statement?

A. That is correct, that's my recollection.

Q. And that of course, that interview continued here in the office of the United States Marshal after I had gotten here?

A. After he had sent for us after you had [2827] departed, we continued the interview.

Q. He sent for you?

A. That is correct.

Q. Did you give me any notice of that?

A. No, sir.

The Court. What date was that?

The Witness. That was June 8th, sir.

By Mr. Quillen:

Q. At that time, do you know the amount of bond that had been set for him?

A. Yes, sir.

Q. What was the amount of it?

A. It's my recollection that it was fifteen thousand dollars.

Q. And that was on a charge of harboring a fugitive, and possessing an unregistered firearm?

A. That is correct.

Q. Two charges?

A. Yes, sir.

Q. Did you—how long did he remain in custody on that charge?

A. Until June 29th is my recollection.

Q. Did you continue to interview him during that period of time?

A. No, sir. Had an interview with him on the [2828] 29th of June, but we did not continue to interview him during that period.

Q. All right. On the 29th, was I given any notice that he was to be interviewed?

A. Not to my recollection; I certainly didn't.

Q. Now, Mr. Hillin——

A. I don't normally notify you, Mr. Quillen.

Q. I'm aware of that, sir.

Then when after the 29th did you conduct another interview with him?

A. The next interview was on July 24th, 1967.

Q. He was not in custody at that time?

A. No, sir, he was not in custody at that time.

Q. But you knew during that time that I was his attorney and was representing him, you knew from about the 7th or 8th of June on that I was representing him, and——

A. That is correct.

Q. In connection with these charges?

A. That is correct.

Q. And when did you say—when was the next interview you mentioned?

A. July 24th.

Q. Where did that interview take place?

A. Took place in a Bureau automobile in East Nashville.

[2829] Q. Now when did you—when was the next time following that you interviewed him?

A. October the 11th, 1967.

Q. Where was he at that time?

A. He was incarcerated at the Smith County jail in Carthage, Tennessee.

Q. Now was he there in solitary confinement?

A. You have asked me that before. When I saw him, he was in a room, he said he was in a cell alone. He was in solo confinement, I guess you might say.

Q. Do you know how long before this interview he had been transferred from the Wilson County jail to the Smith County jail?

A. No, sir, you've asked me that before, and I wasn't keeping up with it.

Q. All right. Now, I believe—you do know that Mr. Mandyck and Mr. Hamar undertook to interview him on two different occasions in the Wilson County jail, did they not?

A. Yes, sir, that is correct.

Q. And he declined to make any statements to them, at that time?

A. That's my recollection; I wasn't present at either interview.

Q. Now your interview on the 11th, of course you knew the man had been indicted?

[2830] A. Yes, sir.

Q. And you knew that I had been appointed by the Court to represent him?

A. That is correct.

Q. And of course that was the same situation on the interviews conducted by Mr. Mandyck and Mr. Hamar?

A. I would assume that the same set of circumstances would apply.

Mr. Quillen. Excuse me a moment.

By Mr. Quillen:

Q. Mr. Hillin, did you ever verbally explain this Miranda warning to Eugene Beard?

A. Yes, sir, I did.

Q. When did you do that?

A. I did that on the first day we talked with him up here. I gave him the warning, the written warning and informed him that he had certain constitutional rights, and I outlined those rights to him, and then told him that we had a form that we had to go by, and we give each suspect or subject who might be considered—who might incriminate himself, I gave him the form, outlined these rights to him, he read it over and said he wasn't going to sign any form, but he would talk to us.

Q. You required him to read the form, you didn't verbally explain it?

[2831] A. Yes, sir, as I gave it to him, I said, this contains your constitutional rights, right not to incriminate yourself or make a statement without your lawyer.

Q. And that's as far as you went orally?

A. That is correct.

Q. And then you did not subsequently make any verbal explanation to him of his rights, did you?

A. At each time when I would interview him, I would produce a form similar to the one which the Court has now, and I would say, these are your constitutional rights, this is the form as you know that we are required to let you read, have an opportunity to waive your rights, and so forth, before we talk with you, and on each interview this was the procedure.

Q. All right. Now what else did you tell him in addition to what you have told us?

A. [No answer.]

Q. Did you tell him at any time that you didn't think he was involved in any of these matters?

A. Did I tell him what?

Q. Did you tell him back in June that you didn't think he was involved in connection with these bank robberies?

A. Did I tell him that I didn't think he was involved?

Q. Yes.

[2832] A. I told him I thought he had information about these bank robberies.

Q. And that you wanted him to give you this information to help the government, is that right?

A. That's correct.

Q. But you didn't warn him at any time that by trying to help the government, he might be cutting his own throat, did you?

A. No, sir, I didn't say he would be cutting his own throat by helping the government.

Q. You didn't tell him he might be furnishing you information that could be used to send him to the penitentiary?

A. His rights were outlined, if he elected to furnish information, that was his doing.

The Court. Is that all now on this preliminary part of it?

Mr. Quillen. I believe so, if the Court please.

The Court. All right.

Mr. Quillen. I want to call Mr. Beard for the limited purpose.

Mr. Knight. Your Honor, I would like to ask one other question.

The Court. All right.

[2833] REDIRECT EXAMINATION

By Mr. **Knight**:

Q. During the time that you were interviewing Mr. Beard, while he was in jail on the murder charge, was that—did you go up there on your own, or did he send for you, or how did you happen to interview him?

A. Mr. Beard sent for us to come to Smith County, where he was incarcerated, to be interviewed.

Q. For the purpose of giving you information?

A. That is correct.

The **Court**. That's on the first occasion?

Mr. **Hillin**. No, sir, that's on the October 11th interview.

Mr. **Quillen**. Let me ask the witness.

RE-CROSS-EXAMINATION

By Mr. **Quillen**:

Q. Do you know that of your own knowledge, or is that something you have been told?

A. I received a telephone call from Mr. Baxter Key.

Mr. **Quillen**. I object.

The **Court**. Overruled, you asked for it.

Mr. **Lowery**. That was the government asked him that.

[2834] The **Court**. You just got through.

Mr. **Lowery**. Asked if he knew of his own knowledge.

The **Court**. I'll ask him how he happened to go there. He didn't go without receiving a telephone call.

All right, step down for a few minutes.

* * * * *

[2835-2880] * * * * *

[2881] * * * * *

The **Court**. I don't know, he didn't explain that himself, but I feel confident that from this total testimony that this man is an intelligent man, he has some sense, he's smart, and I just feel that he knew what he was doing. I think he knew he had a right to a lawyer, and I think he knew he didn't have to say anything if he didn't want to. He didn't have [2882] to sign it, a lot of people don't like to sign things.

Mr. QUILLEN. He didn't sign anything.

The COURT. How's that?

Mr. QUILLEN. He did not sign anything.

The COURT. I said he didn't, but he indicated approval of it, that he understood fully what he was doing, and what his rights were.

[2883] * * * * *

(Whereupon, a short recess was taken after which the following further proceedings were had in the presence of the jury.)

* * * * *

[2884–2889] * * * * *

[2890] * * * * *

HENDERSON HILLIN, JR. (recalled) * * *

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Hillin, I believe when I was questioning you before, we got as far as you stating that you had interviewed Mr. Beard during this investigation, and we had an objection. [2891] I would like to ask you now how many times have you interviewed Mr. Beard during the course of this investigation?

A. During the period May through October, 1967, I have interviewed him seven times.

Q. What was the date of the first interview?

A. The first interview was conducted on May 17, 1967.

Q. And where was that interview conducted?

A. In the detective division of the Nashville Police Department.

Q. At the time you interviewed Mr. Beard, did you advise him of his constitutional rights?

A. That is correct, sir.

* * * * *

Q. During the course of your conversation with Mr. Beard, did you make any reference to anyone else who was a defendant in this case?

[2892] A. I did.

Q. Who was that?

A. James Herman Bostic.

Q. What did you tell Mr. Beard about Mr. Bostic?

A. During the course of the interview, during which Special Agent Darrell Hamar——

Mr. Quillen. Objection, that's undertaking to prove something else that was outside of the matters that were severed.

The Court. What is the purpose of this?

Mr. Knight. The purpose of this is that Mr. Beard was advised on that date that Mr. Bostic was an escapee and a fugitive from justice, proving one of the overt acts.

The Court. Mr. Beard was advised that——.

Mr. Knight. He was advised by Mr. Hillin.

The Court. All right, go ahead.

By Mr. Knight:

Q. Go ahead.

A. During the course of this interview, I advised Mr. Beard that we were looking—the FBI was looking for Jimmy Bostic, and that we were going to try to pick him up or apprehend him.

Q. Did you subsequently arrest Mr. Beard and Mr. Bostic?

[2893] A. That is correct, on June 5, 1967.

Q. What charge was placed against Mr. Bostic?

A. Bostic was charged with unlawful flight to avoid confinement following his escape from the Tennessee State Penitentiary on April 11th.

Q. What charges were placed against Mr. Beard?

Mr. Quillen. Object again, if Your Honor please.

The Court. Overruled.

The Witness. Beard was charged with harboring a federal fugitive, namely James Herman Bostic.

By Mr. KNIGHT:

Q. Where did the arrest of Bostic and Beard take place?

A. It took place at 214 Manchester Street in East Nashville.

Q. What was the basis for that arrest? How did you determine where they were located?

A. Earlier in the day, on June 5th, Special Agent Norwood and I interviewed James Larry Ferguson. During the course of that interview, Ferguson gave us information as to how we might locate James Herman Bostic. On the basis of that information, we checked it out a little bit further, and found a car which we had known that James Herman Bostic had been using parked in front of 214 Manchester Street. Further investigation determined that two—that Beard, William [2894] Eugene Beard's ex-wife was living at 214 Manchester Street.

Q. All right. At the time Beard and Bostic were arrested, where were they standing in relation to the house?

A. They were outside in the front of the house having just arrived in Beard's car.

Q. Did Mr. Beard have anything in his possession at the time he was arrested?

A. Yes, sir.

Mr. QUILLEN. Objection, gets into another collateral matter in that—in one of those severed counts.

The COURT. Let's see the indictment.

Mr. KNIGHT. Relates to one of the overt acts again of the conspiracy, Your Honor. We have gone through this preliminarily.

The COURT. Yes, what overt act, do you recall?

Mr. KNIGHT. I don't know what the number is. It's either seven or eight, I believe, overt act of the first count.

The COURT. All right, overrule.

By Mr. KNIGHT:

Q. What did Mr. Beard have in his possession, Mr. Hillin?

A. Mr. Beard had in his possession a sawed-off shotgun-rifle combination.

[2895] Q. Do you have that weapon with you?

A. Yes, sir, I do.

Q. Would you bring that out?

A. (Witness exhibits weapon.)

Q. Would you just briefly describe that firearm?

A. This is a Savage weapon, make, manufacturer. It is a .22 long rifle over a 410 gauge shotgun. It is approximately fifteen and an eighth inches long, the barrels are seven and one-eighth inches long. It fires one shot in the rifle section, one shot in the 410 shotgun section. This weapon was fully loaded at the time it was taken into custody. It is a very dangerous weapon, because of the very nature of it.

Q. What is the effect of cutting the barrel, shortening the barrel?

A. Shortening of the barrel makes the shot pattern spread much more quickly, making it a much more dangerous weapon. This is a weapon in law enforcement considered to be——

Mr. QUILLEN. We object to what the law enforcement considers—certainly going beyond the realm of——

The COURT. All right, leave that part of it out.

Mr. KNIGHT. Part of the description.

[2896] The COURT. When it fires, does it fire the bullet and the shotgun shells simultaneously?

The WITNESS. No, sir, you can fire them separately.

By Mr. KNIGHT:

Q. Following Mr. Beard's arrest, did you have an interview with him on June the 7th?

A. Yes, sir, that is correct.

Q. Where did that interview take place?

A. In the Marshal's office, here in this building.

Q. And did you at that time advise Mr. Beard of his constitutional rights?

A. Yes, sir, I did.

Q. And what did you inform Mr. Beard in that respect?

A. At the outset of the interview, upon presenting Mr. Beard with a written form which outlines his constitutional rights, I informed him that prior to conducting the interview, that he had certain rights that we had to warn him about, namely that he had the right to have an attorney present, and that any statement which he might make during the interview could be used against him in a court of law, and that he could stop the interview at any time which he desired. Then I presented him with a form which contains these rights, along with a written waiver. He read the rights and read the waiver, [2897] and indicated to us that he was aware of his rights, but was not willing to sign the paper. He was willing to talk with us, however, and we commenced to take a statement.

Q. Did Mr. Beard talk with you about the fact that he had been arrested with Mr. Bostic and had been found in possession of this firearm?

A. Yes, he did.

Q. What did he tell you about that?

A. He said that he had been arrested with Beard, but that he again did not know that Beard was a federal escapee, being sought on a federal warrant. He remembered that we had interviewed him at the police department on May 17th, but he could not recall that either agent told him that Bostic was a federal fugitive.

He told us that this firearm which is before me here was not his firearm, but was the property of James Herman Bostic, and the fact that he had it in his possession at the time of his arrest was merely a coincidence.

He indicated that he and Bostic were about to break up, and go their separate ways, and that he had happened to have this in his possession at the time they arrived on Manchester Street.

He said that Bostic had, in fact, bought this weapon, he believed from a Sears store in Florida, and that he believed that——

[2898] Mr. Binkley. If Your Honor please, I object to what he may have believed. This is not even what this witness believed; he's saying what somebody else said they believed.

The Court. That's the conversation he is detailing as I understand it, that Beard said he believed.

Mr. Binkley. The fact that it's conversation doesn't make it any more admissible. It's pure hearsay of the rankest sort.

The Court. What ground are you objecting to it on?

Mr. Binkley. On the ground that it's hearsay.

The Court. And has no effect on Bostic?

Mr. Binkley. I don't see how it could.

The Court. Wouldn't this be admissible only to the defendant Beard?

Mr. Knight. Yes, sir, I think so.

The Court. This testimony will be admitted and considered by the jury only with respect to the defendant Beard, ladies and gentlemen, and not with respect to Bostic.

Mr. Knight. Mr. Hillin, you were explaining——

The Court. Hearsay as to him, because it was not a statement made to carry out the conspiracy.

[2899] By Mr. Knight:

Q. You were giving Beard's explanation of where the gun came from.

A. That's right.

Q. Go ahead.

A. That he believed that should he get in position where he could, that he could find a bill of sale that Bostic had actually bought the weapon and Beard could clear himself on this charge.

Q. Did he indicate to you anything about whether he knew that Bostic was or was not an escapee?

A. He indicated that he knew that Bostic was an escapee from the Tennessee State Penitentiary; he indicated that he had known Bostic several years ago in school, and had also known him during a period of time together, sometime before.

Q. All right, sir. Now during the course of any interview conducted on that day or during the course of this interview you are referring to, was the subject of the Bordeaux Bank robbery brought up?

A. Yes, sir, it was.

Q. Did Mr. Beard make any statement about the Bordeaux Bank robbery at that time?

A. Yes, sir, he did.

Q. Could you characterize the type of statement [2900] that Mr. Beard gave you?

A. Yes, sir, I can. It was a detailed description of the Bordeaux Bank robbery of April 24, 1967. During this statement, it was outlined as to who planned the robbery, when it was planned, who participated in the robbery, who assisted in the robbery, the getaway route used, a hiding place utilized by two members of the organization, and some subsequent activities on that day.

Further, it was indicated the amount of the loot each participant got, and some of their activities immediately—of the participants immediately before and following the robbery.

Q. Did he at that time give you the names of the other people involved?

A. Yes, sir, he did.

Q. I won't ask you to state those names, but——

* * * * *

[2901] By Mr. Knight:

Q. He did state the names of each one of these people?

A. Yes, sir, he did.

Q. Did he state the part that each of these people had played in this robbery?

A. Yes, sir, he did.

Q. All right.

Did you conduct a further interview of Mr. Beard on the following day?

A. Yes, sir, I did.

Q. And without going into all of the details again, did you advise him of his constitutional rights at this time?

A. Yes, sir, I did.

Q. Was the advice you gave him on that date comparable to the advice you gave him on the 7th of June?

A. Yes, we furnished him with a form, the same form.

Q. Yes.

A. At the outset of the interview, advised him that this was the same form containing his constitutional rights. We didn't go into each right individually at that time, but we did say this is the same form containing your constitutional rights. He read the form and again indicated [2902] that he wished to talk with us.

Q. Now on June the 8th, did Mr. Beard give you any further information about the Bordeaux Bank robbery?

A. Yes, sir, he did.

Q. Did he make any reference to one of the weapons that might have been used in this robbery?

A. Yes, sir, he did.

Q. What did he say about it?

A. He said that the weapon used in the Bordeaux Bank robbery was a twenty-gauge, bolt-action, sawed-off shotgun, and that it had been in the possession of James Larry Ferguson.

Q. Did he offer to produce this gun for you or make any statement along those lines?

A. Yes, he did.

Q. What did he say?

A. He said that should he be released on bond or released on the charge that he would be able to produce this weapon and to make it available to the government.

Q. All right. Did he ever subsequently produce that weapon?

A. No, sir, he did not.

Q. Now also on June the 8th, was the subject of the Orlinda Bank burglary raised with Mr. Beard?

A. Yes, sir, it was.

[2903] Q. What did he state with reference to the Orlinda Bank burglary?

A. He stated that he did not desire to discuss the bank burglary of Orlinda because he had been in Bowling Green and he was involved too deep, and he didn't want to go into it.

Q. Did he state whether or not he knew who had been involved in that burglary?

A. Yes.

Q. What did he say?

A. He said he knew the participants in that bank burglary, but he did not care to go into it.

Q. Into the details?

A. That's right.

Q. All right. Did you conduct an interview with Mr. Beard on the 29th of June?

A. Yes, sir, I did.

Q. And again, preliminarily, did you advise Mr. Beard of his rights, constitutional rights?

A. Yes, sir, I did.

Q. And what did you do in that regard?

A. At the outset of the interview, on talking with him again, I advised him that we had to again advise him of his rights, his constitutional rights, and I presented him at that time something with the statement like, Gene, [2904] here's the form containing your rights, your constitutional rights, and I ask you to read it and sign it if you will. He took the form, he read it, indicated that he did not desire to sign it, but that he was willing to talk with us.

Q. And after he did talk with you, did he make any reference again to the Bordeaux Bank robbery?

A. Yes, sir, he did.

Q. He did?

A. Furnished additional information at that time.

Q. And what information did he furnish?

A. He advised at that time that he had learned first of the robbery of the Bordeaux Bank from James Larry—Kingfish—Ferguson. He advised that a short time after the robbery, that James Larry Ferguson had approached him to use his car, "his" that means Beard's car.

Q. Mr. Hillin, I'm asking you now about the interview of June 29th. I believe you are possibly referring to a previous interview. I've skipped over one of the interviews.

A. Let me refresh my recollection on the 29th.

Q. If you will do that.

A. You are correct. This is the interview in which we talked about the 20-gauge, bolt-action shotgun.

Q. Did he, during that interview, make reference to anything else of a tangible nature connected with the [2905] Bordeaux Bank robbery, any other object?

A. Yes, he indicated as to the location of a hiding place during that interview.

Q. And did he indicate something that might be still hidden in that hiding place?

A. Yes, Mr. Beard indicated that the twenty-gauge sawed-off shotgun, which had been used in the Bordeaux Bank robbery had been hidden at a location at the apartment of Beard's ex-wife at 214 Manchester. He advised that sometime during the time Beard had been confined during the period of June 5th to the 29th, that Ferguson had removed the shotgun from the location and apparently had it at that time.

Q. All right. Did he make reference to some property that might have been taken from the Bordeaux Bank during the bank robbery?

A. Yes.

Q. What was that?

A. He referred to some pennies which had been taken in that robbery.

Q. What did he say about those pennies?

A. He said that those pennies had been hidden in a location on Stokers Lane which is in the general vicinity of the Bordeaux Bank, and located between Tuckers Lane and Buena Vista Pike. He indicated that approximately fifty dollars in pennies had been hidden in a wooded area by two [2906] of the people involved in that robbery.

Q. Now where is—let me ask you this, first, did you go to that area with Mr. Beard?

A. Yes, sir, I did.

Q. Was that on the same day?

A. Yes, sir, later that day.

Q. Where is that area in relation to the Bordeaux Bank?

A. It's approximately three miles from the Bordeaux Bank.

Q. Where is it in relation to the old TB Hospital?

A. It's approximately one mile from the TB Hospital.

Q. All right. What happened after you and Mr. Beard got out there? What was the purpose in going out there?

A. The purpose in going there was to determine the location of the hiding place and possibly find—determine if we could find the pennies which might still be there.

We drove to the location, which Mr. Beard pointed out to us. It's a wooded area on the north side of Stokers Lane, and he found an opening up into this wooded area and indicated that this was the opening where two of the participants had hidden up in the wooded area, and that they would watch from that location for their pick up later in the afternoon after the robbery.

[2907] Q. Were you successful in locating the pennies?

A. No, sir, we were not.

Q. Now, directing your attention back again to the interview of July 24th, will you tell the jury where that interview took place, and what was said at that time?

A. This is an interview which Special Agent Robert Veraca and I conducted with William Eugene Beard. We interviewed Mr. Beard in an automobile in East Nashville.

Q. All right. Again, preliminarily, did you advise Mr. Beard of his constitutional rights?

A. Again, in the same fashion. I told Eugene Beard prior to the interview that I would have to advise him of his constitutional rights, and at that time I presented him with the rights and waiver form which he read, indicated that he understood, but did not desire to sign.

Thereafter he furnished information.

Q. And what information did he furnish?

A. Mr. Beard advised us that—at that time we were trying to find out what his—what his knowledge, how he came to have this knowledge, detailed knowledge of the Bordeaux Bank robbery. He advised us that several days after the Bordeaux Bank robbery, that James Larry Ferguson had asked him to use his car, and also Ferguson wanted to hide some money under Beard's floor mat. He said that Ferguson had indicated that the police were always shaking him down, [2908] and that he needed a safe place to hide the money, so for several days thereafter, Ferguson would put his money in there, and remove part of it, tens and twenties, and put the rest back.

So Ferguson—at first he said Ferguson was reluctant to talk about the Bordeaux Bank, but after that admitted to him that he had participated in the bank robbery, and then furnished details about it. He said that every time that Kingfish got drunk he would start talking about it, and Kingfish began drinking pretty heavily at that time.

Q. So that he was talking about it pretty frequently?

A. Yes, sir, he was talking pretty frequently about it.

Q. During that interview, did Beard tell you about any other criminal activity?

A. Yes, he did.

Q. What was that?

A. Beard related that he was in a residence in Nashville during May of 1967, in which a bank robbery was being planned.

Q. Now Mr. Hillin, whose residence was that? Whose residence did he say he was present at?

Mr. Wilson. I'm going to object, if Your Honor please.

[2909] The Court. I'll admit this subject to the same limitation. It's admissible only with respect to the defendant Beard, and not with respect to any other defendant.

By Mr. Knight:

Q. Whose residence was that, Mr. Hillin?

A. He said he was present at the residence of Gary Ethridge.

Q. Did he say that some other people were present at that time?

A. Yes, he did.

Q. I won't ask you to name any of the other people that he said were present, but if you will state what he said the substance of the conversation was at that time.

A. The substance of this conversation was that the planned bank robbery of the Commerce Union Bank on Thompson Lane, at the underpass. He indicated that during the conversation about this bank robbery, it was indicated that it would be an easy bank robbery to pull, and that weapons were available, and it would be an easy one to pull off.

Q. Did he tell you what his part in this bank robbery was supposed to be?

A. Yes, he did.

Q. What did he say?

[2910] A. He indicated that he was to drive the getaway car in this bank robbery.

Q. Did he tell you whether or not this bank robbery had gone off or did he tell you about that?

A. He said it did not go off, because too many people began talking about it, and that it never came off.

Q. All right, sir.

Now, Mr. Hillin, after Eugene Beard was arrested in September of this year, did you conduct any interviews while he was incarcerated?

A. Yes, sir, I did.

Q. Did you conduct an interview on the 11th of October?

A. Yes, sir, I did, at Carthage, Tennessee.

Q. And how did that interview come about?

A. At approximately—between six and six-thirty, I received a telephone call——

Mr. QUILLEN. We object to what he received now from someone else.

Mr. KNIGHT. It's his reason for going up.

The COURT. Ask him what he did in response to the telephone call, not what it was.

By Mr. KNIGHT:

Q. Go ahead.

A. In response to a telephone call, I proceeded [2911] to Carthage, Tennessee, to the Smith County jail, to interview William Eugene Beard. Special Agent Darrell Hamar went with me on that interview, and we proceeded to interview him in the presence of District Attorney General Baxter Key and Special Agent Bob Goodwin of the Tennessee Bureau of Identification.

Q. And did you again advise Mr. Beard of his constitutional rights?

A. Yes, sir, his constitutional rights were again outlined, and he was furnished again with a waiver and a rights form which he read, indicated he understood, but did not desire to sign.

Q. Did he make any statement to you about whether he wanted to talk to you?

A. Yes, sir, he acknowledged that he had wanted to talk to us, and there was some talk about the difficulty in getting there. Special Agent Goodwin had been in Rockwood, Tennessee, proceeding on a case over there, and he had had to turn around and come back, and I was eating my dinner.

Q. All right. And did Mr. Beard make a statement at that time?

A. Yes, sir. Yes, sir, he did.

Q. Was that a lengthy statement or a brief statement?

A. It was a lengthy statement.

[2912] Q. And what was the general subject matter of the statement that Mr. Beard gave at that time?

A. The subject matter covered Beard's activities through the early morning hours of September 23, 1967, through his arrest later that day.

* * * * *

[2913] * * * * *

Q. Mr. Hillin, I just have ~~one or~~ two further questions. I believe you were testifying before the noon recess on the 11th of October, Mr. Beard gave a somewhat detailed statement to you concerning his version of his whereabouts on the 22nd, 23rd of September, is that right?

A. Yes, sir, that's correct.

Q. During the course of this explanation Mr. Beard gave you, did he make any statement to you about where he had been on the morning of September the 23rd?

A. Yes, sir, he did.

[2914] Q. What did he say?

A. His story was that he had been at a drive-in in Nashville——

Q. Mr. Hillin, let me just interrupt you a minute. I'm not asking you about the entire story that he gave you, just focusing your attention on the morning of September 23rd, the statement that he made to you with respect to where he was that morning.

A. He indicated that at about eight o'clock that morning, on September 23rd, that he was on the Statesville Road near Watertown hitchhiking for a ride, and had gotten a ride into Watertown.

Q. And he indicated that was about eight a.m., that morning?

A. Eight a.m., on September 23rd.

Q. All right. Now referring you back to the interview of July the 24th, I believe you testified that Mr. Beard told you that Ferguson had been doing a certain amount of talking about the Bordeaux Bank robbery.

A. That is correct.

Q. Where did he say Ferguson was doing this talking? I'm asking you geographically, where were they?

A. Most of this was in Florida, and some of it back in Tennessee.

Q. Did Mr. Beard refer to any particular person [2915] to whom Mr. Ferguson made statements about the Bordeaux Bank robbery while they were in Florida?

A. Yes, sir, he did.

Q. And who was that?

A. A Linda Letos.

Q. Did Beard tell you other persons to whom Ferguson made statements about the Bordeaux Bank robbery while they were in Florida?

A. Yes, sir, he identified other people.

Q. And what other people did he identify?

A. He said that in addition to Linda, there would have been Shirley Burton, Judy Farmer, and Beard's sister, Patsy Beard.

Q. All right, sir.

Mr. KNIGHT. At this time, Your Honor, I would like to introduce that shotgun in evidence as the government's next numbered exhibit.

The COURT. All right, let it be admitted.

The CLERK. Plaintiff's Exhibit No. 49.

(PLAINTIFF'S EXHIBIT No. 49 was marked for identification and filed.)

* * * * *

[2916–2918] * * * * *

[2919] * * * * *

Mr. MERRITT. As I said, may it please the Court, that's the government's case.

* * * * *

[2920–2935] * * * * *

[2936] * * * * *

Mr. BINKLEY. May it please Your Honor, I'll be very brief. I just want to move that as far as James Bostic is concerned, that there be a finding of acquittal, and I'll state very briefly, because the only testimony against him is what is supposed to be admissions and other things from witnesses Bobo, Leeman, [2937] Letos, Burton and Farmer, none of whom, by their own statements and actions, should be believed under oath in a court of law.

* * * * *

[2938–2939] * * * * *

[2940] * * * * *

The COURT. Well, I'm going to overrule all of the motions at this time, and you may renew them at the conclusion of all of the evidence.

* * * * *

[2941–2968] * * * * *

[2969] * * * * *

JIM ALLEN FREEMAN, a witness called to testify by and in behalf of the defendant Ethridge, after having first been duly sworn, was examined, and testified as follows:

* * * * *

[2970–2976] * * * * *

[2977] * * * * *

CROSS EXAMINATION

By Mr. KNIGHT:

Q. Mr. Freeman, were you a pretty good friend of Kingfish Ferguson's?

A. Yes, sir.

Q. Known him for some time?

A. Yes, sir.

Q. Did Kingfish ever talk to you about Mr. Leeman, tell you about any prior relationships he had had with Mr. Leeman?

A. Yes, sir.

Q. Did he tell you that Mr. Leeman had been involved in the planning of a bank robbery?

A. Yes, sir.

Q. Did he tell you that he—that Kingfish had [2978] been involved in the bank robbery himself?

A. Yes, sir.

Q. What bank robbery was that?

A. Bordeaux Bank.

Q. Did he tell you who else was involved in that bank robbery?

Mr. WILSON. Object, if Your Honor please.

Mr. BINKLEY. Objection.

The COURT. Sustained.

Mr. KNIGHT. Your Honor, the direct testimony of this witness has been directed toward trying to establish some, I take it, trying to establish some motive on the part of Leeman to do something to Larry Ferguson.

Now they have asked him what conversations and activities he's had with Larry Ferguson that would prove this motive, and I'm trying to show that he knows of motives on the part of other people connected with this case.

The COURT. Yes, but the difficulty is you run into the hearsay objection.

Mr. BINKLEY. I would like to object to hearsay and feel like we ought to apply the same rules to the government that we applied to the defendant.

Mr. MERRITT. He just got through opening the [2979] door, asked him about what Larry Ferguson told him.

Mr. WILSON. That's right.

Mr. MERRITT. Now that last question was what did Larry Ferguson say that Leeman said.

The COURT. Yes, but he withdrew it, he wasn't allowed to answer it.

Mr. BINKLEY. I object on the hearsay.

The COURT. I think the subject matter of the direct examination was the incident when Larry Ferguson stayed at Leeman's home, and then what happened after Leeman returned and found his house in this condition and some items of property and clothing and so forth missing, but now you are going into the whole general subject matter that—I don't think you ought to do that.

Mr. MERRITT. He's trying to establish some kind of motive here. Looks like if he knows about another motive, it's on the same subject, we ought to be entitled to go into it.

The COURT. But I'm limiting him to what he knows himself in trying to establish another motive and not let him testify to hearsay.

Mr. KNIGHT. I do have some questions to ask him about what Ferguson told him about what Ferguson did.

[2980] Mr. QUILLEN. I'll object on behalf of the defendant Beard.

The COURT. I can't admit that unless it's to carry out the conspiracy. If you can show it's a conversation which in and of itself promoted some object of the conspiracy, that would be admissible.

Mr. KNIGHT. All right, sir. Just one moment, please.

By Mr. KNIGHT:

Q. All right, Mr. Freeman, I will ask you whether in September of this year, you recall a conversation that you had with Larry Ferguson with regard to a proposed bank robbery?

A. Yes.

Mr. QUILLEN. Objection.

The COURT. Same ground, same objection?

Mr. QUILLEN. It's hearsay.

The COURT. You are attempting to show now this was a conversation to promote the conspiracy?

Mr. KNIGHT. That's right, Your Honor.

The COURT: What's the date of it?

Mr. KNIGHT. The date, I believe the date of this conversation was sometime in early September of this year.

The COURT. Well, lay the groundwork for it, [2981] and let's see if it does have some relationship to the conspiracy. If it's just a bald statement that he made to some stranger, it wouldn't be in promotion of the conspiracy.

By Mr. KNIGHT:

Q. Was this a statement made by Larry Ferguson to you?

A. Yes, sir.

Q. And in making this statement, did he suggest to you that you would be joining in a bank robbery?

A. Yes, sir.

The COURT. Well, overrule the objection; let him answer.

Mr. QUILLEN. For the additional reason, if the Court please, that it's going beyond the scope of the direct examination, and they are making him their own witness.

Mr. WILSON. I object on that ground, that it's going beyond the scope. He was put on here for one purpose, and one purpose alone.

The Court. Well, of course you can make him your witness to that extent.

Mr. Knight. Your Honor, I could make him my witness to that extent.

The Court. Yes.

[2982] Mr. Knight. The direct testimony of this witness did, however, go to show a motive I believe, a motive for the killing of Ferguson.

The Court. For the present, you'll have to treat him as your witness.

Mr. Wilson. We want a copy of his Jencks Act statement.

The Court. Then you would have the right to cross examine on that. Go ahead.

By Mr. Knight:

Q. Just state to the Court what Larry Ferguson told you about this proposed bank robbery?

A. Just said he had a bank robbery with some friends.

Q. Some friends of his?

A. And wanted to know if I wanted in on it.

Q. And did he tell you who any of those friends were?

A. Would you repeat that question again, please?

Q. Would you speak up?

A.Would you repeat that question again, please?

Q. When he told you about this bank robbery, did he tell you who was to be involved in it from the standpoint of planning it?

A. Yes, sir, he mentioned two names.

[2983] Q. What names did he mention?

A. Leeman and—and another boy named Gary. He never did call no last name, just Gary.

Q. Another boy named Gary. Did he say anything about this man Gary?

Mr. Wilson. Objection.

By Mr. Knight:

Q. What business he was in or did he identify him in any way for you?

A. He said ~~he was~~ a big man.

Q. All right. Following that first conversation, did you all make any progress about that? About you joining in this bank robbery? Did you have a subsequent meeting with him?

A. I did see him after that, and he asked me about joining him, and I told him I didn't know, I'd think about it.

Q. Did you go anywhere with him connected with this?

A. Well, I went with him one night down in here in East Nashville, Northeast Nashville somewhere.

* * * * *

[2984] * * * * *

Q. Which boy was that he was supposed to talk to?

A. The one named Gary.

Q. And why didn't you go all the way with him? What did he say about that?

A. He wouldn't let me go all the way to the house with him, said Gary might not like it.

Q. And then he went on and left you. Where did he leave you? Where were you staying?

A. I don't know, the intersection of two streets, I don't know the streets, I don't know the neighborhood.

Q. And after some period of time, did he come back?

A. Yes, sir.

Q. And what did he tell you at that time?

A. He told me he would let me know more about it later on.

Q. Were you ever successful in getting involved in this particular bank robbery?

A. No, sir.

Q. All right, sir.

Mr. Knight. Now, Your Honor, I believe we have established that this man was involved in an attempt to recruit him into some of this activity, [2985] and I think on that basis, I'm entitled to ask him questions about conversations he had with Larry Ferguson at other times.

The Court. Well, if they were a part and parcel of this same conversation he's testified to, I think that would be competent.

Mr. Wilson. If Your Honor please, we are of course——

The Court. It wouldn't have to be the same day or the same occasion; it might have been extended over a period of time. I don't know.

Mr. Knight. It would be a prior occasion and it would have to do with Ferguson's connection with the Bordeaux Bank robbery.

The Court. All right.

Mr. **Wilson**. Of course we are again confronted with the fact that the defendant—or the deceased Ferguson of course is no longer available for cross examination to determine the veracity of these statements, and we do object to it. His statements of course to others that have been made have not been admitted to the Court.

The **Court**. Ferguson's other——

Mr. **Wilson**. Your Honor has been very careful in guarding the statements.

[2986] The **Court**. That's right, I have confined it in this limitation, but there have been numerous statements attributed to Ferguson, the deceased Ferguson, which I've admitted on the theory that the jury would be enitled to consider them as being an act in furtherance of the conspiracy, that is the conversation itself.

Mr. **Wilson**. Yes, sir, if Your Honor please, however, in this particular instance, there was no one present except this witness and the deceased. On other occasions there that Your Honor has admitted them into the record, a portion of the defendants have been present at that time, but in this instance here, why the lips of Ferguson are sealed by the grave, and we can no longer in any way repudiate that, so we are——

The **Court**. Overrule the objection. If you can show that they are part of the conspiracy, it would be competent.

Get along now, let's finish with this witness.

Mr. **Binkley**. Note our exception.

Mr. **Quillen**. We want to join in that objection.

The **Court**. Overrule.

By Mr. **Knight**:

Q. Now, Mr. Freeman, you have testified to this conversation that you had with Larry Ferguson in September of [2987] year.

A. Yes, sir.

Q. Now prior to September, did you spend a fair amount of time with Larry Ferguson? Did you see a good deal of him?

A. Yes, sir, off and on.

Q. All right, sir, and during the course of time you spent with him, was that over the summer?

A. Yes, sir.

Q. Would he, from time to time take you into his confidence with respect to a prior bank robbery that he had been involved in?

A. Yes, sir.

Q. All right, sir, and which bank robbery was that?

A. The Bordeaux Bank.

Q. The Bordeaux Bank?

A. Yes, sir.

The COURT: Speak up now.

By Mr. KNIGHT:

Q. What did he tell you about the Bordeaux Bank robbery?

A. He told me that he was in on the bank robbery.

Q. Did he tell you specifically what he did? Did he say what part he played in the bank robbery?

[2988] A. Yes, sir.

Q. What part did he say he played?

A. Said he went into the bank and got the money.

Q. All right. Did he tell you what kind of weapons had been used in the bank robbery?

A. Yes, sir, shotgun and a .38 pistol.

Q. Did he make any comment to you about the kind of clothes he was wearing during that bank robbery?

A. Yes, sir.

Q. What did he say?

A. Yellow socks and black loafers.

Q. Yellow socks and black loafers?

A. Yes, sir.

Q. Did he tell you who planned that bank robbery?

A. Yes, sir.

Q. Who was that?

A. He said Leeman masterminded the bank robbery.

Q. Did he mention anyone else?

A. He mentioned Gary again.

Q. Mentioned Gary again?

A. Yes.

Q. The same man he mentioned in connection with this proposed bank robbery in September?

A. Yes.

[2989–2998] * * * * *

[2999] December 5, 1967

(Sixteenth Day of Trial)

* * * * *

[3000–3038] * * * * *

[3039] * * * * *

GARY LEE ETHRIDGE, one of the defendants, called to testify in his own behalf, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

* * * * *

[3040–3115] * * * * *

[3116] * * * * *

By Mr. Merritt:

Q. Well, back in March, when Leeman was arrested and indicted for this offense about the Clothes Horse, he wasn't the only one arrested and indicted for that, was he, Mr. Ethridge?

A. There was several other people.

Q. Who were they?

A. Charles Bobo, my brother, myself—I don't know who else.

Q. And it was after that you all——

A. Leeman's wife.

Q. That you and Leeman and several others all decided——.

Mr. Wilson. Now, if Your Honor please, he's gone just as far—he shouldn't—I objected before.

The Court. I don't understand your objection.

[3117] Mr. Wilson. My objection is to going into any specific details of an unrelated, untried offense in this matter here.

The Court. I think it would be competent to show any connection or relationship between this witness and Leeman or any other person who is shown by some evidence to have some connection with these matters on trial.

If a byproduct of that is to disclose something that otherwise might not be competent, that would not rule it out, as I understand the proper rule of evidence.

Mr. WILSON. I shall be permitted to let him make an explanation of that?

The COURT. Oh, certainly, yes.

* * * * *

[3118–3128] * * * * *

[3129] * * * * *

GEORGIA RAY ETHRIDGE, one of the defendants called to testify in her own behalf, after having first been duly sworn, was examined, and testified as follows:

* * * * *

[3130–3145] * * * * *

[3146] * * * * *

CROSS-EXAMINATION

By Mr. MERRITT:

* * * * *

[3147–3157] * * * * *

[3158] * * * * *

Q. Bostic, do you know of any reason why he would put you in the bank robbery if you weren't involved?

A. No, I don't.

Mr. BINKLEY. If Your Honor please, I would like to object to that for the same reason just for the record.

The COURT. Wait a minute, for the same reason, I don't know what you are talking about.

Mr. WILSON. If Your Honor please, those statements were not admitted against Mrs. Ethridge.

Mr. MERRITT. Oh, yes, they were.

The COURT. I don't know which particular statements they were, there have been so many statements.

Mr. WILSON. There was a hearsay statement of a witness named Judy Farmer who testified that Bostic had given her certain information. It was admitted to the jury for limited purposes. It was not considered to be a part of the conspiracy. It was——

[3159] The COURT. No, I think you are wrong about that.

Mr. WILSON. Other than those persons who were present.

The COURT. Admitted for general purposes, contributing to the conspiracy charged in the indictment to rob banks and possess money derived therefrom.

Mr. BINKLEY. If Your Honor please, my objection——

The COURT. And enlist other people in and gain their confidence with respect to the possession of the money.

That's the theory on which I admitted them. Now the jury is going to have to determine whether or not, in the final analysis, those statements were in execution of the conspiracy. That would be a jury question.

Mr. WILSON. We have been arguing so long, I've forgotten what I objected to.

The COURT. I distinctly recall those particular conversations now that you mention the name of the witness Judy Farmer.

Mr. BINKLEY. My objection is to the way Mr. Merritt is phrasing his question, because the only testimony we have was somebody said that Bostic said——

[3160] The COURT. Well, of course the jury will have to determine whether those statements were actually made. That's a jury question also.

Mr. BINKLEY. But there's so much going into the jury, I don't think there's any need to adding to the confusion.

The COURT. The jury may not be confused. I don't know. They are not supposed to be.

* * * * *

[3161–3193] * * * * *

[3194] * * * * *

The COURT. All right.

Now who will proceed next?

[3195] Mr. QUILLEN. I had intended to, if the Court please, however the witnesses were subpoenaed for the next day of Court, and I'm not ready this afternoon.

The COURT. Why did you do that?

Mr. QUILLEN. Well, I didn't frankly anticipate that we would get to us today.

The COURT. Well, it's not for you to speculate on matters of that kind.

Mr. QUILLEN. And in addition——.

The COURT. I told the U.S. Attorney in the beginning of the trial, that he would have to have enough witnesses here on the theory that we would go all day or half the day, and we couldn't speculate on it, and the same thing applies to you.

Mr. QUILLEN. And the investigator who was named by the Court——

The COURT. What's that?

Mr. QUILLEN.——Mr. Saindon is out today getting some evidence that was only discovered Sunday. I took him yesterday afternoon late——

Mr. MERRITT. May it please the Court, I don't think Mr. Quillen ought to be——

The COURT. Yes, don't make any statement.

Mr. QUILLEN. Well, it's not here.

The COURT. But the point is I'm telling you [3196] from here on out, you'll have to not try to anticipate these matters, but you'll have to have your witnesses available so there will be no breaks in the trial on account of the absence of witnesses.

Now fortunately, it's time for adjournment anyway, and we have made arrangements for the next two days. I assume that still stands, you have to be in Cincinnati tomorrow?

Mr. QUILLEN. Yes, sir.

The COURT. What about the following day?

Mr. MERRITT. Mr. Wilson and Mr. Bateman and I are all scheduled to be up there in Cincinnati, and Mr. Quillen and I tomorrow, unfortunately.

The COURT. So when we resume the trial on Friday, you will keep this in mind, have enough witnesses here to take up the entire trial day, and we may hold Court on Saturday. Have them prepared to be here on Saturday.

Ladies and gentlemen of the jury, sometime ago, it was brought to my attention that attorneys on both sides in this case had commitments with the Court of Appeals for this Circuit to appear there for arguments on cases that had been set for hearing by the Court of Appeals.

At my request, inquiry was made of the Court [3197] of Appeals to determine whether the schedule of that Court could be changed in order to continue in this trial, and not have this two-day interrupting, and it was found that that was impossible, that the Court of Appeals had its schedule set up and was not willing to make any change, and for that reason, in order to accommodate the attorneys in this case, in important matters they have in the appellate court, I agreed to postpone this hearing during this two-day period.

It's just a matter of necessity. I regret it very much since you all are sequestered, a sequestered jury, but unfortunately, there was no way to avoid or prevent it, and there was one other commitment, and that was one which the Court itself had made some six months ago for the thirteenth of this month, so there will be no court on that day.

This is a commitment which I could not in any way alter or change. It may be that trial will be concluded prior to that date. I'm hopeful that it will, but in the event that we do go to the thirteenth, we will have to have a postponement on that day.

* * * * *

[3198–3203] * * * * *

December 8, 1967

[3204] (Seventeenth Day of Trial)

(Whereupon, at 9:20 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

The COURT. All right, sir.

Mr. QUILLEN. May it please the Court, on behalf of the defendant William Eugene Beard, we earlier made a motion to ask the Court to enter an order requiring the government to furnish us with any information they may have, the United States may have, or which may be available to them, which might be beneficial to the defendant.

At that time, Mr. Merritt announced that they had nothing which would be beneficial to us. I recall specifically in my motion I asked that any statement they had obtained from Jimmy Allen Freeman be furnished us. Subsequently Mr. Freeman was called as a witness by the defendant, some of the defendants, and in that connection, we obtained a copy of a statement he had made, a Jencks Act statement, to agents of the Federal Bureau of Investigation on September the 15th, 1967. [3205] Part of the information in that statement is that Ferguson told

Freeman he was extremely angry at the split, as Ferguson received seventy-five hundred dollars, and Charles Bobo obtained an even split.

Now, if the Court please, we insist that that of course is something that is very beneficial to the defendant. It casts, I think—is something that the jury should be entitled to consider with respect to giving weight to the testimony of Charles Bobo as to what his part, if any, may have been in connection with this matter, and in view of this—of this information, I wish to file the statement of Jimmy Allen Freeman for the limited purpose of supporting the motion and again renew my motion that the government be required to furnish us with such information as they may have which would be of benefit to the defendant, or at least in the alternative, submit it to Your Honor to determine, so Your Honor may determine whether or not this would be of some benefit.

The Court. Submit what?

Mr. Quillen. Any statements they have from any witnesses, if the Court please, which would——

The Court. Well, the Jencks Act statements have all been submitted to you.

Mr. Quillen. The Jencks Act statements have, [3206] if the Court please, but it's our position that the government should not be permitted to retain and conceal from the defendants any evidence they may have which might be of some benefit to them, and I insist that either Mr. Merritt doesn't recognize what would be——

The Court. What is this? I don't understand your——

Mr. Quillen. This is a statement——

The Court. Where did you get the statement?

Mr. Quillen. Subsequent to making the motion, this man Freeman was called as a witness for the defendant. Then Mr. Merritt for the government on cross examination of him, started going beyond the scope of the direct examination——

The Court. With the Court's permission, and in the exercise of its discretion.

Mr. Quillen. (Continuing). And we were furnished at that time the Jencks Act statement.

The Court. Yes.

Mr. Quillen. And it brought to light this information about Bobo.

The Court. Well, you've got it.

Mr. QUILLEN. It's my opinion, if the Court please, that this supports our theory that there may [3207] be some other——

The COURT. Not necessarily. Did you bring that out on cross examination?

Mr. QUILLEN. Mr. Wilson did.

The COURT. Mr. Wilson did, so it's in the record.

Mr. QUILLEN. It may be other witnesses.

The COURT. All I can do is direct the United States Attorney——

Mr. MERRITT. I don't consider that this information here tends to exonerate any of the defendants, may it please the Court.

The COURT. I'm not passing on whether it does or doesn't. It's in the record, and it's been produced, and I certainly can't conduct an inquisition to determine whether or not there's anything at all in the government's files that might be favorable to the defendants in some fashion or in some facet or aspect or interpretation of the matter, some phrase here or sentence there that might possibly be of some benefit. I don't see how I could ever do that and finish the trial.

Mr. QUILLEN. I cited a case——

The COURT. The courts are bogged down enough as it is with all of the preliminary matters, exact [3208] statements, Escobedo and so on.

Mr. QUILLEN. I cited this Poole case earlier which stated that it was error for the government to conceal——

The COURT. I don't see that the government has concealed anything. There's been no evidence.

Mr. QUILLEN. I move to file this statement for that limited purpose.

The COURT. Let it be filed.

Call the jury.

* * * * * * *

[3209-3231] * * * * * *

[3232] * * * * * *

WILLIAM EUGENE BEARD one of the defendants, called to testify in his own behalf, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. QUILLEN:

Q. * * * * * * * *

[3233–3268] * * * * * * * *

[3269] * * * * * * *

Q. The statement I have, Eugene, states that on 10–11–67, Carthage, Tennessee, Mr. Darrell Hamar——

Mr. WILSON: Those statements, if Your Honor please, were read or at least they were gone into in the absence of the jury by counsel, both for the government and for the defendant Beard, and at that time the Court admitted those statements for a certain purpose, and subsequently, when the jury was brought back in, there were certain instructions to the jury.

The alleged conspiracy had terminated at that time, and for that purpose, of course, there were certain limitations. Mr. Hillin was not permitted, according to my recollection—I'm subject to correction, it's been a long time—but he was not permitted to name the persons therein that the defendant Beard had named at that time.

The COURT. He was not asked to do so.

Mr. WILSON. He was not asked to do so.

The COURT. That's right.

Mr. WILSON. Now I object to these statements [3270] based upon the fact that certain things that are contained therein are absolute hearsay. Those things that were related to Mr. Beard by the deceased Ferguson are hearsay, and matters and things that he did not know about himself are contained in this statement, I believe, if I'm correct, concerning the Bordeaux Bank robbery, and——

Mr. QUILLEN. You are in error about that, Mr. Wilson. This is a statement——

Mr. WILSON. Is this the statement concerning only the affairs on the creek bank?

Mr. QUILLEN. Yes, sir.

Mr. WILSON. And has no relation to the Bordeaux Bank?

Mr. QUILLEN. That's right.

Mr. WILSON. Well, if we get into the other statement——

The COURT. Well, any statement, of course, that was attributed to this defendant after his arrest, any statements he may have made, would be considered by the jury and the jury could consider them only with respect to this particular party, and not as having any evidentiary value as to the other parties.

Mr. KNIGHT. Of course, Your Honor, any statement he made could be used generally for impeachment [3271] purposes to cross examine him.

The COURT. Well, I didn't say they couldn't.

Mr. KNIGHT. To the extent that he names other parties in the statements——

The COURT. I said they would be.

Mr. KNIGHT. Used for impeaching his testimony.

The COURT. Only as evidence regarding the guilt or innocence of this particular defendant, and would have no binding effect or evidentiary effect with respect to the charges against the other parties.

I have instructed the jury to that effect already and the jury will keep that in mind of course.

All right.

By Mr. QUILLEN:

Eugene, at the time you stayed there in the Smith County jail, you stated here that you were asked to furnish details of your activities on the night of September 22, 1967, and the early morning of September 23rd.

Now were you asked to do that?

A. Yes, sir.

Q. Now did you tell these agents that at approximately one-thirty a.m. Saturday morning, September 23rd, 1967, you met James Larry Ferguson at the Burger Boy Restaurant located on——

Mr. KNIGHT. If Your Honor please, I want to [3272] object to that. If he wants to ask Mr. Beard what he said in——

The COURT. I would agree with him except I believe this has already been placed in the record.

Mr. KNIGHT. No, Your Honor, I think just one brief excerpt.

The COURT. Didn't Hillin testify to this?

Mr. QUILLEN. He testified in connection with this statement, as I recall, that he did interview him there in the jail.

The COURT. Well, I think——

Mr. QUILLEN. He made reference to this statement.

Mr. KNIGHT. Your Honor, he testified that Beard told him that he had been in Statesville that morning, that's all he said.

Mr. QUILLEN. This is for the purpose of explaining this statement from one end to the other, if the Court please.

Mr. KNIGHT. I would say that the form of the question is leading.

The COURT. Well, it's somewhat leading, but I don't see that it hurts anything. You could have placed the whole statement in the record yourself if you had seen fit to do so, and you didn't do it, on [3273] this aspect at least.

* * * * * * *

[3274–3307]

[3308]. By Mr. KNIGHT:

* * * * * * *

[3309]

Q. All right, sir. Then I believe you testified that after that very brief association with Mr. Ferguson in Florida, that you met him again in Bowling Green, is that right?

A. Yes, sir.

Q. What was your reason for going up there?

A. Well, when I left Florida, the reason-part of the reason I kept the two hundred dollars, they told me to go on up to Bowling Green and get a room and he would be on up, and that I could make some money. That was all I was told. I wasn't trusted by the members.

* * * * * * *

[3310–3311]

[3312]

Q. Jenkins, Ferguson, who else down there didn't trust you?

A. Mr. Bostic.

Q. James Bostic?

A. Yes, sir.

Q. They were kind of closed mouth around you, is that right?

A. Yes, sir.

Q. But Ferguson did tell you that you could make some money if you would go to Bowling Green with them?

A. Yes, sir.

[3313-3321]

[3322]

Q. Now, Mr. Beard, you have testified that although Ferguson didn't trust you at first, there was a time in your relationship with him when he did begin to trust you some, and tell you about the Bordeaux bank robbery.

A. Yes, sir.

Q. When was that?

A. Well, tell me directly, I don't know. A lot of times, I'm just standing around, and he would be drinking pretty heavily, and he would more or less brag about it, and I would overhear it. That's how I first heard anything about it.

[3323] Q. Was that after you got back from Bowling Green?

A. I heard some about it in Florida.

Q. You heard some about it in Florida?

A. Yes, sir.

Q. Well now, let's go back to that, Mr. Beard. I thought you just testified that they didn't take you into their confidence.

A. They didn't.

Q. Well, let's hear what you heard about it in Florida.

A. I overheard their conversations.

Mr. Binkley. I object to what he's heard now. He asked him about Ferguson, and number one, I would like to object to anything that Ferguson may have told him, because that's hearsay.

Mr. Knight. May it please the Court, the question of what Ferguson told him has been opened up on direct examination.

The Court. Oh, yes, that's competent, any declarations along that line.

Mr. Binkley. If Your Honor please——

The Court. Could conceivably be statements made for the purpose of carrying out the alleged conspiracy. Of course that would be for the jury to determine.

Mr. Binkley. If Your Honor please, then I would [3324] like—I would just like to have my objection noted, and I'm not going to object to this any more, because I hate to have to every time it's brought up.

The Court. Well, it might be somewhat different in some other objection or context, so you may have to object. I'm not giving you a general objection to everything.

Mr. **Binkley.** All right. I'll just object when it's brought up.

The **Court.** All right, overruled.

By Mr. **Knight:**

Q. Mr. Beard, I had understood from your previous testimony that Ferguson didn't take you into his confidence until sometime after you had got back from Florida.

A. Yes, sir.

Q. And I understood that you didn't know anything about the Bordeaux Bank robbery until you got back from Florida.

A. In details, I didn't.

Q. What did you know about it?

A. I just overheard him talking about it.

Q. Who did you hear talking about it?

A. Fish.

Q. And who else?

A. Jenkins.

Q. And who else?

[3325] A. Linda Letos was there at the time.

Q. Linda Letos and who else?

A. That's all I remember; they was all drinking pretty heavy.

Q. And you heard these people talking about the Bordeaux Bank robbery?

A. I heard Fish talking about it.

Q. You didn't hear anyone who is charged in this case talking about it down there, did you?

A. No, sir.

Q. All right, sir. What were they saying about it?

A. I don't recall, just that they brought up the fact that's the way it should be or something. That's all I recall.

Q. That's the way it should be.

A. When I heard them, they looked around and saw I was in the room, they more or less just shut up, they changed the subject.

Q. But you did catch the name Bordeaux Bank?

A. Yes, sir, I caught that.

Q. And you did hear Ferguson talking about the Bordeaux Bank?

A. Yes, sir.

Q. Did Mr. Ferguson have any legitimate occupation that you know of at that time?

[3326] A. No, sir.

Q. Any way he could get income by working?

A. No, sir.

Q. He was down there—he had a good bit of money with him, didn't he?

A. He had quite a bit, yes, sir.

Q. Gave you two hundred dollars?

A. To hold, yes, sir, he did.

Q. You heard him talking about the Bordeaux Bank robbery?

A. Yes, sir.

Q. Didn't that lead you to believe that that money might have come from the Bordeaux Bank?

A. No, sir, it didn't.

Q. Why not?

A. Because he give me the money when we first got down there in case he got broke or anything, for us to get back to Nashville on, and this was toward the last—the last few days we was there.

Q. And you never did connect up Ferguson's talk about the Bordeaux Bank robbery with the money he was spending and the money he gave you?

A. Not at that time.

Q. No, you didn't. Okay.

Now was there a later time or an earlier time [3327] or any time when Ferguson got into detail with you about the Bordeaux bank robbery?

A. Yes, sir.

Q. When was that?

A. I don't recall the date.

Q. Well, was it in May?

A. Before I was arrested in June.

Q. Before you were arrested in June. Was it after you came back from Orlinda, Tennessee?

A. Somewhere in that neighborhood, yes, sir.

Q. And during the time that he was talking to you about it, did he give you any more money?

A. No, sir.

Q. Did he gave you fourteen or fifteen hundred dollars to keep in your car for him?

A. No, sir.

Q. Never did that?

A. The fourteen or fifteen hundred dollars, he had borrowed my car before we went to Florida.

Q. Yeah.

A. And I had had a girl in the car by the name of Barbara Hooper, and I didn't know it was in the car, and he come over there and raised up the floor mat to my car and said that he had put the money there, because he knew that I wouldn't be stopped, because I was working and that was the only time he [3328] had any money in my car.

Q. Did he tell you he was going to put it in your car?

A. No, sir, he already had it in my car. He had borrowed my car before, him and my sister, while I was at work.

Q. Did he tell you why he was going to put it in there?

A. Because my car wouldn't be stopped, because I was working.

Q. All right. Did he tell you where this money came from?

A. No, sir, he didn't.

Q. Did not tell you where this money came from?

A. No, sir, not at that time, he didn't.

Q. Did he later tell you where this money came from?

A. Yes, sir, back in about the last part of May, somewhere in there.

Q. Last part of May?

A. He got in more details about it.

Q. And at the time he told you where it came from, was that money still in your car?

A. No, sir, it was not.

Q. So the money that he gave you he never told you [3329] where it came from until after it was out of your possession, is that right?

A. That's right.

Q. It's true of the two hundred dollars, and it's true of the fourteen hundred dollars?

A. As I said, I didn't know the fourteen hundred dollars was in my car. He had borrowed my car the night before and the next day it was there, and he come up and said, I need some money, and I didn't know what he was talking about, and he raised the floor mat and the girl in the car, she said, I was as much surprised as you were.

Q. He did leave that money in your car?

A. If I knew it was there; it wouldn't have been there when he got there.

Q. He did leave it there?

A. It was there, yes, sir.

Q. And after a while he took it out and spent it, and after he had spent it, he told you it had come from the Bordeaux Bank? Is that what you are saying?

A. Later on he did.

Q. Just like the two hundred dollars, later on you learned that came from the Bordeaux Bank?

A. Yes, sir.

* * * * * * *

[3330] * * * * *

Q. All right, sir. Now both on your direct testimony and while you were being cross examined by Mr. Wilson, you pretty emphatically said that the only person who had ever told you anything about the Bordeaux Bank robbery was James Larry Ferguson, do you remember testifying to that?

A. I remember he asked me that question, yes, sir.

Q. Do you remember what your answer was?

A. Seems like he asked the question is Ferguson the only one. I didn't understand your question, if that's the case right there.

Q. Let me ask you the question that Mr. Wilson asked you.

A. Okay.

Q. Was James Larry Ferguson the only person who told you the details of the Bordeaux Bank robbery?

A. No, sir.

Q. All right, sir. Who else told you?

A. Well, some later on, I overheard from Bostic, I overheard some conversation from Jimmy Bostic.

Q. Who else?

Mr. BINKLEY. Wait a minute; I didn't understand the answer to that.

The WITNESS. I had overheard some conversation [3331] from Jimmy Bostic, but it wasn't in detail.

By Mr. KNIGHT:

Q. Who else?

A. That's about it.

* * * * * * *

[3332] Q. To refresh your recollection, do you recall being at Gary Ethridge's house on a Monday morning toward the middle of May and also present was Fish Ferguson, Jimmy Bostic, Jimmy Jenkins, Gary Ethridge, and Gary's wife Georgia?

Mr. WILSON. If your Honor please, I want to object to this, and I can see where that is leading, and that it did not come from this witness, it came from—it has already been ruled out of this testimony, and if it goes any further, I think the matter should be discussed outside of the presence of the jury if it is discussed. There has been no proof that he attended such a meeting as that, so the question of course cannot refresh his memory.

Mr. KNIGHT. Your Honor, I intend to go into the details about this meeting and to cross examine him on the basis of a statement he made about that meeting.

Mr. WILSON. That he made?

Mr. KNIGHT. Yes, sir.

The COURT. Is that in one of the Jencks Act statements?

Mr. KNIGHT: Yes, sir.

The COURT. I think it could be appropriately used to cross examine this witness, if you have a prior statement.

[3333] Mr. KNIGHT. Yes, sir, we did.

The COURT. Be admitted for that purpose in testing his credibility.

Mr. WILSON. The question was asked in such a fashion as to show that the government had offered proof that this man was actually present there.

The COURT. I think he asked him if he was present at such and such a meeting in May, and he said——

Mr. KNIGHT. Said he didn't remember it.

The COURT. Said he didn't remember it.

By Mr. KNIGHT:

Q. Do you now remember it?

A. That part right now I know what you are talking about, and I made that up, the whole part, for the simple reason this was in July, Mr. Hillin come over to my house, they come over there quite frequently wanting to question me, and that part there, every time they come there, they said what's their next job, what did they plan, and it's not true, no, sir.

Q. It's not true that there was a meeting over there, you weren't present at any such meeting?

A. No, sir, I was not.

Q. You are now testifying that you lied to Mr. Hillin about having been present at such a meeting?

A. The statements there, I never saw those statements until I come to Court.

[3334] Q. Answer my question, Mr. Beard. Are you testifying that you lied to Mr. Hillin about being present at such a meeting at Gary Ethridge's house?

A. If you—why don't he write the question down that he asked, it's not on there.

Q. Mr. Beard, can you answer my question?

A. Yes, I lied to him about that, yes.

Q. You did lie to him about being present at that meeting?

A. That's correct.

Q. All right, sir. And I believe you testified that Gary Ethridge never told you anything about the Bordeaux Bank robbery?

A. That's correct.

Q. Did you ever tell Mr. Hillin that Gary Ethridge told you something about the Bordeaux bank robbery?

A. I don't recall if I did or didn't.

Q. Well, to refresh your recollection, did you tell Mr. Hillin that Gary Ethridge told you about it at this meeting that you say you made up in the middle of May over at Ethridge's house?

Mr. Wilson. That statement does not contain that, and I want whatever portion of this read back to this witness. It does not contain that.

Mr. Knight. All right.

[3335] Mr. Wilson. It's your version of what it contains.

Mr. Knight. I will read the portion first that we——

Mr. Wilson. Not the whole thing, just that statement there, just that one.

Mr. Knight. I'm going to read the portion that contains it.

The Court. Go ahead and read it.

Mr. Knight. "Most of the talking at this meeting was being done by Fish Ferguson and Gary Ethridge, with less talking by Jimmy Bostic about the robbery. Fish and Gary at that time said the robbery for this time would be a cinch, that it would be just like the Commerce Union at Bordeaux which they had pulled."

Mr. WILSON. Now read the last sentence in there in that paragraph, the last sentence in that paragraph to show the inconsistency of this.

Mr. KNIGHT. Mr. Wilson, you can cross examine him further.

Mr. WILSON. I don't think the jury should be allowed to receive this.

Mr. MERRITT. Are we going to have to put up with this kind——

The COURT. Until I hear some kind of objection.

[3336] Mr. MERRITT. I'm objecting. He can cross examine the man when we get through.

The COURT. If there's anything in there that ought to be added, you can add it in there. Is there anything in there inconsistent with that statement?

Mr. WILSON. That statement as read.

Mr. KNIGHT. No. As a matter of fact, I'll read that next statement.

The COURT. All right.

Mr. KNIGHT. It was during this period that the following story about the April 27, 1967, robbery of the Bordeaux Bank came out with Fish and Gary doing most of the talking, and some being done by Bostic.

Mr. WILSON. The last sentence.

I guess I'll read it myself, if you won't.

Mr. KNIGHT. I'm willing to, Mr. Wilson.

The COURT. Let's don't argue. Ask him if he made that statement.

By Mr. KNIGHT:

Q. Is that a true statement, Mr. Beard?

A. True to the extent that I made that statement.

Q. You made that statement?

A. Yes, sir.

Q. Was that statement a lie?

A. It was.

[3337] * * * * *

Q. All right. Do you recall making a statement to Mr. Hillin at that time that the Bordeaux robbery was planned by Gary Ethridge and Sarge Leeman?

A. I may have.

[3338] Q. You may have made that statement?

A. Yes, sir.

Q. Did you make it?

A. I don't recall. I haven't seen the statement you're reading to me. I don't remember whether I made that or not.

Q. You don't——

Mr. Quillen. Would the Court permit him to have all of these statements? There's a volume of them, so he can refresh his memory?

The Court. If he wants them; I haven't heard any request. I think this is the proper way to cross examine him. You are his attorney, and you can have the statements before him. I think that's better than for the witness to have a voluminous number of statements in his hand. I don't believe that would expedite the trial.

By Mr. Knight:

Q. Do you recall making that statement?

A. Like I say, I would like to see it.

Q. It's up to your lawyer, Mr. Beard. You don't recall?

A. I don't recall unless I see the statement.

The Court. Read the statement.

Mr. Knight. The statement says:

[3339] "The April 24, 1967, Bordeaux robbery was planned by Gary Ethridge and J. W. 'Sarge' Leeman."

By Mr. Knight:

Q. Do you remember making that statement?

A. Yes.

Q. Was that a true statement?

A. I don't know how true it was; I made the statement.

Q. You don't know whether that was true or not?

A. No, sir, I couldn't say of my own knowledge whether it was true or false.

Q. Did you say that originally Leroy Bracey and Fish Ferguson were to have pulled the job, but Leroy got arrested and

Gary told Fish to find someone to help pull it, did you make that statement?

A. Yes, sir.

Mr. Binkley. If Your Honor please, I would like to object at this time to this method, because what is being done here, we are reading a statement that says the April 24th Bordeaux robbery was planned by so and so, planned by Gary Ethridge, and this witness has already testified that he didn't know anything of his own knowledge, and the notes that are being read from here are notes that were made by an FBI man, and apparently any statement that he makes concerning this, [3340] by his own previous testimony, would have to be from a statement made by somebody else, and I don't think it's proper to read these statements like it was something that this man had knowledge of. I think there should be some showing of where his information comes from before these statements can be just read in Court.

The Court. The question is whether or not he made these statements in substance to the FBI agent.

Mr. Knight. Also, Your Honor——

The Court. Whether he made them or whether he didn't make them.

Mr. Knight. I have just indicated——

The Court. Overrule the objection; go ahead.

Mr. Knight. All right.

By Mr. Knight:

Q. Now you were saying that—I was in the middle of the statement here.

"Originally Leroy Bracey and Fish Ferguson were to have pulled this job. Leroy got arrested and Fish—and Gary told Fish to find someone to help pull it."

Did you make that statement?

A. Yes, sir.

Q. Do you know whether that's a true statement?

A. I was told that, I don't know whether it was true or not.

[3341] Q. Were you told that by Gary Ethridge?

A. No, sir, I don't think so.

Q. You don't think so?

A. It's been a long time; it's been seven or eight months ago.

Q. You think you might have been told that by Gary Ethridge?

A. I don't know.

Q. You just can't remember?

A. I can't remember, that's right.

Q. "Jimmy Bostic, who had just escaped from prison was pulled into the job by Ferguson."

Did you make that statement?

A. If it's written down there, evidently I did. I can't recall what I said.

Mr. BINKLEY. I would just like to have my objection noted, if Your Honor please.

The COURT. I don't know what your objection is.

Mr. BINKLEY. Well, I'm objecting to the same thing. This has got to be a hearsay statement from the witness and I'm objecting again to the manner in which this——

The COURT. Don't have to be a hearsay statement.

Mr. BINKLEY (continuing). Statement of the FBI man was read into the record.

[3342] Mr. KNIGHT. I would just like to say, Your Honor——

The COURT. Let me see what your theory is, that it is a hearsay statement. Doesn't this last matter concern itself with some statement alleged to have been made by Bostic?

Mr. BINKLEY. No, sir.

The COURT. I thought it was.

Mr. KNIGHT. Yes, Your Honor, it is a statement alleged to have been made in the presence of Gary Ethridge, Larry Ferguson and Bostic, and it's a combination——

The COURT. The objection you made a moment ago was attributed to Ferguson, but this is——

Mr. KNIGHT. This is a narration this man is alleged to have obtained from these two people.

Mr. BINKLEY. I don't know where it is alleged that this statement was made in the presence of Bostic.

Mr. KNIGHT. Your Honor, I'm asking this witness about it, and then we'll put on rebuttal proof to show that it was made.

The COURT. Go ahead; I think it's competent.

By Mr. KNIGHT:

Q. "Gary took Bostic and Ferguson to a motel in Manchester, Tennessee, over the weekend just before the robbery. They stayed there until the morning of the [3343] robbery when Gary went down to Manchester and got them."

Did you make that statement?

A. Yes, sir.

Q. You did make it?

A. Yes, sir, I did.

Q. Do you know whether that's a true statement?

A. Do I know it?

Q. Do you remember where you heard the statement?

A. I made the statement. No, sir, I don't. I don't remember the whole thing. If I could see it and see when it was or anything, I'd know something, but I can't recall eight months ago.

Q. But you can recall having made the statement?

A. Yes, sir, seems like I made something to that effect.

Q. Did you hear any—I'm just going to read you a series of statements, and I'm going to ask you whether you heard any of these statements from Gary Ethridge or heard the statements made in the presence of Gary Ethridge.

A. Mr. Knight, I can't remember when I heard them or where I heard them.

Q. I'll read the statements——

The Court. You could approach this, probably be more strictly correct, by interrogating him about the subject matter involved in these statements, and if his [3344] testimony is inconsistent, you could confront him with the statement. That would be the proper way to proceed.

Mr. Knight. All right, Your Honor.

The Court. The way you are doing it, I agree, expedites matters probably, but the strictly appropriate way would be as I said.

Mr. Knight. Just ask him a direct question?

The Court. Ask him the question, did such and such a thing happen, did he have knowledge of such and such a thing, and if his testimony is inconsistent, you can confront him with the prior statement, if it's inconsistent.

Mr. Knight. All right.

By Mr. Knight:

Q. Do you have any knowledge from anyone, from either Bostic, Ethridge or Ferguson of any of the following information?

The information I have just indicated as to whether or not Gary Ethridge took Bostic and Ferguson to a motel in Manchester, Tennessee, preceding the robbery of the Bordeaux branch of the Commerce Union Bank, do you have any knowledge of that from anybody?

A. Yes, sir.

Q. And who do you have that knowledge from?

A. From Larry, he told me about that.

[3345] Q. From Larry?

A. Yes, sir, he told me about that.

Q. Does any of that knowledge come from Mr. Ethridge?

A. It may have, I don't know.

Q. It may have.

Do you have any knowledge as to whether a white Cadillac was used in that robbery as the second get-away car? Do you have any information about that?

A. Yes, sir.

Q. And does any of that information come from Gary Ethridge?

A. The biggest part of these statements come from Fish.

Q. Could you speak up; I didn't hear that.

A. The biggest part of these statements were made to me by Fish.

Q. I understand that.

A. But I don't remember who was present at any time it was talked about or anything.

Mr. Wilson. The witness is having difficulty, I believe, distinguishing if part of the things Fish was telling him was hearsay came from somebody else when Fish told him, which we are getting into a compounded hearsay situation.

Mr. Merritt. Mr. Wilson just wants to tell him [3346] what to say.

The Court. Yes, overruled. Go ahead.

By Mr. Knight:

Q. Do you have any information that Sammy Cole had stolen a car and another car for use as a second get-away car in the robbery? Did you have any information like that?

A. Fish told me that.

Q. Did Fish tell you that in the presence of Gary Ethridge?

A. I don't recall where this took place at.

Q. You don't recall whether he did or not?

A. No, sir, I don't.

Q. Do you have any information as to whether or not Bostic and Fish went in and robbed the bank and then drove to the old TB Hospital? Do you have any information about that?

A. Fish said so.

Q. Fish said so?

A. Yes, sir.

Q. Did he make any of those statements in the presence of Gary Ethridge?

A. I can't remember when these statements took place.

Q. You can't remember?

A. No, sir, I can't.

Q. Do you have any information as to whether or not [3347] Sammy Cole was waiting there at the TB Hospital in the white Cadillac?

A. It had been overheard. I overheard someone say but I don't remember who said half of this stuff.

Q. Don't remember who said that?

A. No, sir, I don't remember a big part of who said this stuff.

Q. Do you think it could have been Mr. Ethridge who said that, or could it have been said in his presence?

A. Could have, I don't know that it was.

Q. Could have.

Do you have any information as to whether or not Fish and Bostic got into the Cadillac and then drove to a nearby wooded area?

A. Yes, sir.

Q. And where did you get that information?

A. I'll be frank, I don't recall where I got it from.

Q. Well, could you have gotten some of that information from Gary Ethridge?

Mr. WILSON. I object to "could you have gotten it."

The COURT. Why isn't that competent?

Mr. KNIGHT. Isn't this the same objection?

Mr. BINKLEY. I object for a witness to get on [3348] and say I may have made a statement, and I don't know it personally.

The COURT. Could he have gotten it from Ethridge, was that the question?

Mr. KNIGHT. Yes, sir.

The COURT. Was there an opportunity?

Mr. Knight. To the best of his memory, could he say that he did get it from Ethridge?

The Court. Yes.

Mr. Binkley. If Your Honor please, I just can't—this has got to be just pure conjecture, because when a witness——

The Court. The witness knows whether he could have gotten it from Ethridge or any other source.

Mr. Binkley. He could say it's possible that he got it from the FBI or somebody.

The Court. Overruled. He knows whether any such statement could have been made in his presence.

By Mr. Knight:

Q. Did you get any information as to whether Fish Ferguson took the Cadillac to a nearby subdivision and parked it and walked for a block or so?

A. Yes, sir. Who did I ~~say in~~ these statements said the stuff, because that right there, at the time that's who I understood said it.

[3349] Q. If it will help you to refresh your recollection, Mr. Beard——

A. I can't recall right now.

Q. I'll state to you that in this statement, you said there was a meeting at Mr. Ethridge's house.

Mr. Binkley. Your Honor, he says in this statement, you said——

The Court. The witness has indicated that he wants him to refresh his recollection. Do you want him to have this statement or not?

Mr. Quillen. Yes, sir, I think so.

The Court. Let him see the statement. Let him examine it.

Mr. Quillen. Which one are you referring to?

Mr. Knight. July the 24th.

Mr. Wilson. While he is reading it there, which I think he should be allowed to do, if Your Honor please, I object to it being called a statement, because this witness has already stated——

The Court. The jury understands that this purports to be, as I understand it, a summation or summary or narrative statement of what took place in an interview between this witness and one of the FBI agents. It doesn't purport to be something he signed, as I understand it, but a narrative by the FBI agent of what took [3350] place between the two. I believe the jury understands that.

* * * * *

Q. All right, Mr. Beard, have you had a chance to sort of refresh your recollection about that interview?

A. Yes, sir.

Q. Do you recall that being an interview in which you did tell Mr. Hillin about a meeting out at Mr. Ethridge's house?

A. Yes, sir.

Q. Do you recall that in that statement to Mr. Hillin, you stated that the information that you got was gotten from Ferguson, Bostic and Ethridge?

A. Yes, sir.

Q. Is your memory refreshed about that?

A. Yes, sir, it is in the statement, sir.

Q. All right, my next question to you is do you [3351] recall any time that James Bostic showed you a place on Stoker's Lane where he and Sammy—where he and Sammy Cole jumped out of the car, the Cadillac, and hid in the woods during that robbery?

A. Fish showed me the place, and I don't recall Bostic——

Q. Fish showed you the place?

A. He showed me the place also. Bostic may have showed me, I couldn't say he did for sure, but I believe he did.

Q. You believe Bostic showed you the place also?

Mr. **Binkley**. I object to it.

The **Court**. Overruled. He says he believes he did, but he couldn't be sure. That's the way I interpret his testimony.

By Mr. **Knight**:

Q. Did you get some information during that meeting that Fish and Gary went to the show, went to the picture show after the robbery?

A. This meeting that you are talking about, which meeting are you talking about?

Q. The meeting that's referred to in this statement that you have just been reading.

A. The one—the meeting that's talking about Thompson Lane Bank, is that the one you're talking about, that meeting didn't take place, that meeting didn't.

[3352] Q. That meeting didn't take place?

A. No, sir.

Q. All right.

A. That didn't happen.

Q. You just invented that meeting?

A. Yes, sir, I invented that.

Q. And when you told Mr. Hillin that all of this information had come during that meeting, that was not true, is that right?

A. That's correct.

Q. All right then. I'll ask you if you had some information that after the robbery Fish Ferguson and Gary Ethridge went to the movies?

A. Yes, sir, I did.

Q. You did?

A. Yes, sir.

Q. Do you recall where that information came from?

A. I believe that was from Larry Ferguson.

Q. Did any of that information come either from Gary Ethridge or was any of that information given you in Gary Ethridge's presence?

A. It may have been confirmed there; I'm not sure.

Q. You're not sure about that?

A. No, sir, I'm not. It's been a long time back.

Q. But it may have been?

[3353] A. Yes, sir, it could have been.

Q. You stated it may have been confirmed by Mr. Ethridge at sometime, is that right?

A. What I meant, it may have been said again in front of him, but it——

Q. Said again in front of Mr. Ethridge?

A. Yeah, at another time.

Q. And confirmed by Mr. Ethridge?

A. I don't mean confirmed, repeated is what I meant, said again.

Q. All right. Did you have some information that Gary's wife drove by the wooded area later in the afternoon and picked up Cole and Bostic?

A. I was told that.

Q. You were told that?

A. Yes, sir.

Q. Who were you told that by?

A. By Fish.

Q. Did any of that information come from Mr. Ethridge or was any of that information given to you in Mr. Ethridge's presence?

A. I don't believe it was.

Q. You don't believe so?

A. No, sir.

Q. Are you certain of that?

[3354] A. No, sir, I'm not certain.

Q. You just don't remember?

A. It's been a long time ago.

Q. Did you have some information that while they were in the woods, Bostic and Cole buried a sack of fifty dollars worth of pennies?

A. Yes, sir.

Q. And where did that information come from?

A. I believe that come from Bostic, I'm not sure.

Q. You think that came from Bostic?

A. Yes, sir.

Q. Did you ever hear that statement made by Mr. Ethridge or in Mr. Ethridge's presence?

A. I don't believe so. It's hard to remember where each one of these—and of this was said, I mean.

Q. It may have been said by Mr. Ethridge or in his presence, but you just don't remember, is that right?

A. I don't remember, yes, sir.

Q. All right. Did you have some information that everybody concerned with the robbery met later that afternoon at Sarge Leeman's house?

A. Yes, sir.

Q. And that there was a five-way cut, and the money was divided five ways?

A. Yes, sir.

[3355] Q. And that Bostic took his cut, Gary held the cut for Fish, and the group broke up. Did you have that information?

A. Yes, sir.

Q. Where did that information come from?

A. It's hard to say. What page is that on that you are talking about?

Q. That's on page number 23 of the report you have. It would be page number 23.

A. 23. Oh, yeah. No, sir, I don't recall. Like it says in the statement, I don't recall who said this. It was said, but I don't recall directly who said it.

Q. Could you narrow it down to the people who could have told you?

Mr. Wilson. I object to that.

The Court. Overruled.

Mr. Wilson. I'm sure the Court heard the question, so I'll——

The Court. Yes, I did.

By Mr. Knight:

Q. Could you narrow it down to two or three or four people who told you about that?

A. Could have been Fish; could have been Bostic.

Q. Could it have been Ethridge?

A. It could have.

[3356] Q. Now, Mr. Beard, do you ever remember seeing a sawed-off shotgun that was supposedly used in this robbery?

A. Yes, sir.

Q. When you saw that shotgun, did it have a peculiar smell to it that you remember?

A. Yes, sir.

Q. What kind of smell was that?

A. Like something laying out in the woods.

Q. Like it had been out in the woods?

A. Yeah, wet or something.

Q. What kind of condition was it in? Was it new looking or rusty?

A. Rusty.

Q. Rusty?

A. Yes.

Q. Who had that shotgun?

That would be in the last paragraph of that statement?

A. Yes, sir, that's what I'm reading now.

It's not—as I said this meeting that was talking about the bank didn't take place, the shotgun, I did see it.

Q. All right, and my question is who had it when you saw it?

A. Larry Ferguson had it when I saw it.

[3357] Q. Who else was there?

A. Well, there was Larry, myself, I believe Bostic was there. I'm not sure whether Gary was or not.

Q. Not sure whether Gary was or not?

A. No, sir, I'm not.

Q. Did you tell Mr. Hillin that at the time you saw that shotgun, it was in the possession of Gary Ethridge, and he was holding it up and saying this one—this is the gun that made us a lot of money, did you tell him that?

A. That's what he's got here, evidently I did.

Q. To the best of your recollection, you did make that statement?

A. Yes, sir.

Q. Was that a true statement?

A. I imagine it was.

Q. You believe that probably is true?

A. Yes, sir, as I say, this has been eight months ago, approximately seven or eight months ago, when all of this happened, especially when I wasn't involved in it.

Q. All right, sir. Now you say that a lot of this information came from Ferguson?

A. Yes, sir.

Q. That's right, isn't it?

A. Yes, sir, it is.

Q. He was doing a lot of talking, wasn't he?

[3350] A. Yes, sir, he was.

Q. He was bragging about this bank robbery and talking about all of these details to just about everybody in Davidson County, wasn't he?

A. Not as much in detail as he told me, but——

Q. Talking about it?

A. Talking about it, yes, he was.

Q. Told a lot of people this, that or the other thing about it?

A. Yes, sir, he did.

Q. And it was pretty well-known among the people that you associated with that he was doing this talking, I mean your friends knew that he was talking, didn't they?

A. Well, who do you mean as my friends?

Q. Well, was it a well-known fact that he was talking?

A. He was getting drunk about and bragging about it; I don't know how well known it was.

Q. A lot of people did know about it?

A. Yes, sir, I suppose so.

Q. Did Mr. Ethridge know about it?

A. I don't know whether he did or not.

* * * * *

[3359–3361] * * * * *

[3362] * * * * *

Q. And isn't it a fact, Mr. Beard, that Gary Ethridge and you and Dickie Self were concerned that this would happen, that he would crack, that he would be arrested and tell the FBI what he knew?

Mr. BATEMAN. I object to any conclusion from this witness about what Dickie Self was concerned about.

The COURT. I believe he answered that no.

Mr. BATEMAN. I didn't hear the answer.

The COURT. Did you answer?

The WITNESS. No, sir, I didn't. If I knew he was talking, I wouldn't go back to the man and tell him I did something. I sure wouldn't be that stupid.

By Mr. KNIGHT:

Q. It's your testimony that there was no concern that Ferguson might talk among those people, no concern expressed by Gary Ethridge or any of these other people?

[3363] A. It may have been brought up.

Q. It may have been brought up?

A. Yes, sir.

Q. May have been brought up.

A. Yes, sir.

Q. Isn't it a fact, Mr. Beard, that in August of this year, Dickie Self, to your personal knowledge, went out with Larry Ferguson and attempted to kill him?

Mr. BATEMAN. I object to that.

The WITNESS. I wasn't there.

By Mr. **Knight**:

Q. Well, what information—do you have any personal information about that?

Mr. **Bateman**. Now just a minute, if it please the Court, if he's going into this, I would like to be heard.

The **Court**. Do you intend to pursue this?

Mr. **Knight**. Yes, sir, he made a flat statement with respect to this.

The **Court**. You mean on—you have a prior statement?

Mr. **Knight**. Yes, sir.

The **Court**. That you are interrogating him about?

Mr. **Knight**. That's right.

Mr. **Bateman**. If Your Honor please, it's a [3364] statement that I have seen. It's a hearsay statement. It's not based on his own knowledge, and it's a statement that he's already repudiated, and said it was untrue.

Mr. **Knight**. I don't recall him repudiating that statement.

Mr. **Bateman**. I'm going to object very strenuously to this type of hearsay being asked in the presence of the jury.

The **Court**. Let's let the jury retire for a minute. I would like to hear a discussion on this.

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

The **Court**. Now what is your statement?

Mr. **Knight**. Your Honor, the statement I refer to is the statement made on October the 11th by Eugene Beard.

The **Court**. Hand it up here.

Mr. **Knight**. And it's the last sentence, the first half of this sentence.

The **Court**. Now you just propose to interrogate him with respect to the first half of that sentence?

Mr. **Knight**. Yes, sir, whether he knows whether [3365] Dickie Self did that is what I've asked him.

The **Court**. Why isn't that competent?

Mr. **Bateman**. Find out how he knows, may it please the Court.

The **Court**. You have this statement, don't you?

Mr. **Bateman**. Yes, sir.

The **Court**. Why wouldn't it be competent to question him about that?

Mr. **Bateman**. Well, if it is the same type of testimony that's been coming in here all afternoon, Your Honor, relative to Ethridge and Bostic and some of the other defendants, I would insist that it be established that it wasn't some type of hearsay or something that somebody might or might not have said in or out of the presence of the particular defendant. I think we should know in the absence of the jury what his purported source of information is, if in fact he now adheres to that statement.

Mr. **Knight**. Your Honor, the statement flatly says that he knows it. I think I'm entitled to cross examine him about it.

The **Court**. That's what the statement says, the flat statement that he did know.

Mr. **Bateman**. If it's going to result in some hearsay coming before the jury, I'm going to move for [3366] a mistrial. I think I would be entitled to that. I think we should go into it now and see what he purports to know.

The only reference to anything of this kind heretofore indicated by the government was triple hearsay.

The **Court**. Well, you mean—on this point?

Mr. **Bateman**. Yes.

Mr. **Knight**. Statement by Eugene Beard.

Mr. **Merritt**. May it please the Court, if he knows it by his own personal knowledge or by virtue of a statement made to him by a co-conspirator——

The **Court**. Under those circumstances——

Mr. **Knight**. I think it's a legitimate cross examination to establish the basis—why he said it.

Mr. **Bateman**. Is all of this questioning here, and these answers being elicited to be limited to this defendant as far as substantive evidence in the case?

Mr. **Knight**. No.

The **Court**. Well, of course, any time that he makes a statement that he was present at a meeting with any co-conspirator or alleged co-conspirator or defendants, we'll say, that is certainly competent proof to show his own connection and association with these persons.

Mr. **Knight**. It could also be substantive [3367] evidence of acts in furtherance of this conspiracy.

The Court. It would also be substantive proof insofar as he agrees that such and such occurred and so on, wouldn't it also be proof which would go to the establishment of the alleged conspiracy?

Mr. Bateman. That may be true, Your Honor, but if this witness has made this statement based upon something that somebody has told him——

The Court. Well, say it was another co-conspirator, another defendant.

Mr. Bateman. Well, I will take the position of course that—I don't know what he's going to say, I don't know what the circumstances are.

The Court. I don't either.

Mr. Bateman. But I've seen this happen repeatedly during the course of this trial, and I don't want it to happen in this case.

The Court. I don't know what you mean by "repeatedly". I've tried to limit the questioning and the types of declarations that went into the record within the proper limits as set out by the authorities and I think I've done that, with appropriate instructions to the jury from time to time so that they will be constantly reminded of the limitations.

Some of these declarations are subject to being [3368] limited; some of them are not. Some of them are admissible for a wider purpose, but if—ask him what his statement is. Let me hear it. Let me see what it is.

By Mr. Knight:

Q. Mr. Beard, do you know that Dickie Self attempted to kill Larry Ferguson?

A. No, sir, I don't know. If you're referring to that statement, they asked me had I heard, had heard was emphasized, it wasn't what I knowed they asked me had I heard anything about it.

Q. And you said you had heard something about it, is that right?

A. Yeah, I had heard something about it.

Q. And where did you hear that?

A. From Ferguson, and he said a boy named John, and that's all I—really, that I know, actual knowledge.

* * * * *

[3369–3370] * * * * *

[3371] * * * * *

Mr. KNIGHT. Your Honor, I would like to say this. I think this entire statement, this entire sentence was an attempt by this man to exculpate himself from this murder, and I think he was stating who he thought had murdered Ferguson and why he thought so, and I think to the extent he was trying to do that, I think it's relevant to the question of whether he's guilty of it. He was trying to blame someone else for it.

The COURT. Well, doesn't this fall directly within the right of the plaintiff to cross examine the witness on the basis of an inconsistent statement?

Mr. BATEMAN. Your Honor, it may be proper for the cross examination of this witness, but it is extremely prejudicial and unnecessary as far as the case against Self. He's already now said that he didn't have this knowledge, that what he—the knowledge he had was that Ferguson had told him that a man that Ferguson knew as John had tried——

[3372] The COURT. That's true, but I'm not the trier of the facts. I don't judge the credibility of the witnesses. If he's taking the witness stand and made a statement under oath which is inconsistent with some prior statement that he had made bearing upon this controversy, then it's proper to try to impeach him. That's the purpose of cross examination.

Mr. BATEMAN. I wouldn't maintain it's improper as to him. Your Honor, but if you're going to admit that line of questioning, and it is to be discussed, I respectfully move for a severance and relief——

The COURT. Your client is not charged with killing Ferguson.

Mr. BATEMAN. That's true, but the murder of Ferguson is charged as a part of the conspiracy with which my client is charged.

The COURT. That's right.

Mr. BATEMAN. And that's all the more reason why it shouldn't come before the jury.

The COURT. It's alleged as one of the overt acts.

Mr. BATEMAN. That Beard and Ethridge killed Ferguson.

The COURT. Yes. Why is it inadmissible? You haven't given me any good reason why it's inadmissible.

[3373] Mr. **Bateman**. It's inadmissible because it is hearsay, it has no probative value. I'm talking about as to Self.

The **Court**. I'm talking about as to the credibility of this witness.

Mr. **Bateman**. I can't complain about that aspect of it, but I do think it prejudices Self to be mixed up in this——

The **Court**. Well, I grant you everybody is prejudiced if they are mixed up in it.

Mr. **Bateman**. I don't mean mixed up in the conspiracy. I mean mixed up in this trial together here.

The **Court**. I think it's competent, recall the jury.

Mr. **Bateman**. You overrule the motion for severance?

The **Court**. Yes.

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

The **Court**. Now you first have to ask him independently of this statement. Lay the groundwork.

Mr. **Knight**. Independently, yes, sir.

By Mr. **Knight**:

Q. Mr. Ferguson, do you know if James Dickie Self attempted to kill James Larry Ferguson?

[3374] A. I do not know of my own knowledge, no, sir.

Q. You do not know of your own knowledge?

A. That's correct.

Q. Did you make a statement to FBI agent Hillin on October the 11th in which you said, I know that Dickie Self attempted to kill Ferguson on a previous occasion? Did you make that statement?

A. It was my understanding, I said I heard; I didn't say I know, I don't believe I did.

Q. I can't hear your answer.

A. I don't believe I said I know, because I didn't know.

Q. You can't recall whether you said that you knew?

A. If I did, it was—it wasn't true, because I didn't know. I had heard. I didn't know.

Q. Whether you said that or not, you are now saying that you didn't personally know, is that right?

A. That's correct, I didn't know.

Q. Did you get that information from someone else?

A. I don't understand you, what information are you talking about?

Q. Did you get the information about an attempt being made on Larry Ferguson's life, did you get that information from someone else?

A. Ferguson said an attempt had been made.

[3375] Q. Larry Ferguson told you that?

A. Yes.

Q. Now wasn't this statement by you to the FBI on that occasion, wasn't that statement about Dickie Self an attempt on your part to make the FBI believe that Dickie Self killed Larry Ferguson?

A. No, sir, it was not.

Q. Did you not state on that occasion that it was your opinion that Dickie Self killed Larry Ferguson?

Mr. Bateman. Object.

The Court. Overruled.

By Mr. Knight:

Q. Did you make a statement?

A. I may have stated it, I can't recall.

Q. You may have stated it?

A. But it's not true.

Q. That was not your opinion?

A. It's not true, I may have said it, but it's not true.

Q. You mean the fact is not true?

A. That's correct.

Q. You mean Dickie Self did not kill James Larry Ferguson?

A. I don't know who did.

Q. Well, are you trying to state that it's not your [3376] opinion that he did?

A. That's correct.

Q. It is not your opinion that——

A. Yes, sir.

Q. ——Dickie Self killed James Larry Ferguson?

A. That's correct.

Q. And you don't recall whether you told the FBI on October the 11th that it was your opinion that——

A. I may have told them that.

Q. You may have told them that?

A. Yes.

Q. You think that's reasonably possible?

A. Yes, sir.

Q. And what would be your reason for telling them that, Mr. Beard?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Just no reason at all?

A. I may have had a reason at the time. I don't know. I had been in solitary confinement at the time; I know that.

Q. Wasn't a very significant thing to you to express an opinion that someone had killed someone else?

A. That was—they kept asking, they wanted an [3377] opinion, an opinion, an opinion. It's what they kept asking for over and over again, to close the interview, it would be repeatedly over as to—they wanted an opinion as to whether he did, as to whether anyone else had anything to do with it, and as I said, I don't know who did.

Q. But you may have stated that it was your personal opinion that it was Self, is that right?

A. Yes, sir, I may have stated that.

Mr. Knight. All right.

The Court. Now ladies and gentlemen of the jury, this line of questioning by the attorney I have admitted for your consideration solely with respect to what effect it may have on the credibility of the witness who is now on the witness stand. It is proper for an attorney to examine a witness on some matter pertaining to the case and then, if his testimony appears to be in any way inconsistent with a prior statement which he has made, then to question him about that apparent inconsistency. That's appropriate in order to test the credibility of the witness. This will not be in any way considered by you as evidence against or adverse to the defendant Self. In the first place, he is not charged in the count, count eight, with killing Ferguson. That charge is not made against him, and this kind of proof, and this proof is not admitted and should not be weighed by you, and [3378] will not be considered by you in any way prejudicial to Self on the other counts of the indictment in which he is charged. That includes the conspiracy count and the robbery counts.

* * * * *

[3379-3382] * * * * *

[3383] * * * * *

Q. You heard the testimony of all of these people from up in the Prosperity Community area, the Watsons, the Murphys, Taylor Willard, to the effect that Larry Ferguson told [3384] them before he died that Eugene Beard killed me because I knew too much about some bank robberies. Now do you have any feeling about whether that testimony is mistaken or not?

A. No, sir, I don't. I don't know——

Q. You don't know one way or the other?

A. No, sir.

Q. You think Kingfish Ferguson might have been lying about that?

A. What part was he lying about? What are you talking about? He's lying about the whole part.

Q. Lying about you killing him because you knew too much about some bank robberies.

A. He's mistaken about that.

Q. What's that?

A. He's mistaken; I didn't shoot him.

* * * * *

[3385-3405] * * * * *

[3406] * * * * *

Q. Didn't you state to Mr. Hillin during this interview that it was your opinion that Gary Ethridge was responsible for the death of James Larry Ferguson?

Mr. Bateman. If the Court please, this cross examination is contrary to the government's theory; their theory is that Gary Ethridge paid this boy to go up there and do this killing. Now they are cross examining along the line——

Mr. Knight. We are not adopting the story, Your Honor, we are just cross examining.

The Court. I don't understand that they are——

Mr. Wilson. Object on the grounds that it calls [3407] for an opinion and a conclusion.

The Court. Is this based on the same idea that you proceeded on a while ago, prior statement?

Mr. KNIGHT. Yes, Your Honor, impeach this man as to the alibi he attempted to set up..

The COURT. Do you have a prior statement?

Mr. KNIGHT. Yes, I do.

The COURT. Overruled.

* * * * *

[3408] By Mr. KNIGHT:

Q. Mr. Beard, I'll repeat the question, didn't you tell Mr. Hillin during the interview of October the 11th that it was your opinion that Gary Ethridge was responsible for James Larry Ferguson's death?

A. My personal opinion that that's what I'm supposed to have said?

Q. Yes.

A. I don't recall saying that; I could have said it. I mean I don't recall it.

Q. Do you recall saying anything like that?

A. I may have said that, I don't recall.

Q. You may have said that?

A. Yes, sir, I'm not saying I didn't say that.

Q. You may have said that?

A. Yes, sir, I'm not saying I didn't say that.

Q: You may have said that?

The COURT. Do you have the statement you are questioning him about?

Mr. KNIGHT. Yes, sir.

The COURT. Why don't you read that and see whether or not it's correct, according to his testimony.

Mr. KNIGHT. All right.

The statement is, he, meaning Beard, stated that he personally felt that Ferguson had been killed at the [3409] direction of Gary Lee Ethridge.

The COURT. The question is whether or not he made that statement to the FBI agent?

Mr. KNIGHT. Yes, sir.

By Mr. KNIGHT:

Q. Did you make that statement?

A. I don't recall making a statement to that effect.

Q. You think you might have made it?

A. I could have made it, yes, sir; I could have made it.

* * * * *

[3410–3425] * * * * * *

[3426] * * * * * *

By Mr. **Knight**:

Q. As I understood you just now, Mr. Beard, in summarizing this information you had about Bordeaux, you said that most of it came from Larry Ferguson, is that right?

[3427] A. Yes, I did.

Q. And the information that Larry Ferguson was putting out included the fact that Gary Ethridge had planned that robbery and had been involved in it in detail, is that right?

A. You mean did Fish say that?

Q. Yes.

A. He said Leeman had planned it.

Q. He didn't say Gary planned it?

A. Gary's name was mentioned, but he didn't say Gary had planned it, I don't believe. I don't know how it went.

Q. Mr. Beard, is there some particular reason why you are reluctant to testify against Mr. Ethridge?

A. No, sir, there is not.

Q. There is no reason?

A. No, sir.

Q. You have no fear of Mr. Ethridge?

A. I do not.

Q. You have no fear that Mr. Ethridge might harm you or some member of your family?

A. I do not.

Mr. **Wilson**. If Your Honor please, I object to this, unless he can prove that.

Mr. **Knight**. I can, Your Honor.

[3428] Mr. **Wilson**. This is about as dangerous a thing as could be admitted into a record.

Mr. **Lowery**. If the Court please, this witness has testified against Mr. Ethridge.

The **Court**. You know what he says, it speaks for itself, the record speaks for itself, and I think it's proper to probe the motivations of the witness for the benefit of the jury. Let the jury draw their own conclusions.

Mr. **Wilson**. Unless they can tie it in with something else, I object to it.

The COURT. You have already objected to it, but I think it's proper cross examination.

By Mr. KNIGHT:

Q. Mr. Beard, you have just stated, I believe, that you have no fear that Mr. Ethridge will harm either you or any member of your family, is that right?

A. That's right.

Q. Now, do you recall, I'm going to ask—well, I'm going to ask you this. Did you ever make a statement to the FBI indicating that you did have such fear about Mr. Ethridge?

A. Yes, I did.

Q. Yes, you did. And when was that?

A. A long time ago.

Q. Was that during the interview of June the 8th?

[3429] A. Somewhere along there.

Q. And did you tell the FBI at that time that you were afraid that if you testified against Gary Ethridge, your child would be murdered?

A. I don't remember exactly what I said, something to that effect.

Q. Something to that effect?

A. Yes.

Q. And did you state that you would therefore be forced to retract the statement that you gave Mr. Hillin if you were called upon to testify against Mr. Ethridge?

A. I believe I did.

Q. You believe you said that?

Mr. KNIGHT. That's all.

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[3430-3438] * * * * *

[3439] December 11, 1967

(Eighteenth Day of Trial)

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[3440-3443] * * * * *

[3444] * * * * *

JAMES RICHARD SELF, one of the defendants, called to testify in his own behalf, after having first been duly sworn, was examined and testified as follows:

* * * * *

[3445–3474] * * * * *

[3475] * * * * *

By Mr. **Merritt**:

* * * * *

[3476–3480] * * * * *

[3481] * * * * *

Q. Now I'll ask you if you didn't tell the Belcher girl who came up here and testified that Gary had had the car moved from Parkview to the TB Hospital for a big job, do you deny that?

A. Yes, sir.

[3482] Q. You deny that?

A. Yes, sir.

Q. I'll ask you if you didn't tell the Belcher girl and the Whitaker boy who came up here and testified that the car was used in the Bordeaux Bank robbery?

A. No, sir, I didn't say that.

Mr. **Wilson**. If Your Honor please, I object to the manner and the form of the question inasmuch as both the Belcher girl and the Whitaker witness each of them repudiated the statements given in those statements, and the United States Attorney——

Mr. **Merritt**. That's untrue, and a misrepresentation of the facts.

The **Court**. Wait a minute, I can't hear but one at a time.

Mr. **Wilson**. ——asked for a specific right to cross examine. Those were one of his six witnesses who came on who were repudiating——

The **Court**. The witness repudiated some statements, but as I recall it, not all of the statements.

Mr. **Wilson**. Well, I am objecting to him referring to Miss Belcher's testimony, if he wants to ask if it's the truth, that's one thing, but to leave the jury to believe that Miss Belcher testified in such and such a fashion, I'm objecting to the manner——

[3483] The **Court**. Well, you might ask him first if it's the truth or not, and then if he heard her testimony in that regard.

Mr. Wilson. Yes, if he will ask first if it's true, and then refer to Miss Belcher's testimony——

The Court. Those things that the witness admitted to, frankly, I can't recall all of them. I recall some, but not all of them.

By Mr. Merritt:

Q. I assume that you deny that you told Whitaker and Belcher—Miss Belcher that this automobile was used by Ethridge in the Bordeaux Bank robbery. You deny that, don't you?

A. Yes, sir.

Q. Did you hear their testimony?

A. Yes, sir.

Q. Did you hear their testimony to the effect that——

Mr. Wilson. Now, if Your Honor please, that's just exactly what I objected to a moment ago.

The Court. Well, the same thing. Go ahead.

By Mr. Merritt:

Q. Did you hear their testimony to the effect that you had told them that?

A. I heard them testify, yes, sir.

[3484] Q. So you are saying they are not telling that truthfully?

Mr. Bateman. We object to that; that's a conclusion for the jury to determine.

The Court. Sustained.

Mr. Merritt. All right.

* * * * *

[3485–3503] * * * * *

[3504] * * * * *

The Court. All right, go ahead and call your first rebuttal witness.

I'm assuming that the defense rests now except for this one exception.

Mr. Binkley. Yes, sir.

The Court. All right.

Mr. Merritt. First, may it please the Court, is to request the introduction of Government Exhibit No. 5 in evidence in light of the defendant Beard's testimony about the shooting.

The **Court**. Show that to counsel.

Mr. **Lowery**. For what purpose is this? For what reason?

[3505] Mr. **Merritt**. Show that the shooting couldn't have happened the way it was described.

Mr. **Lowery**. If the Court please, I fail to see—I fail to see its introduction for that reason.

Mr. **Quillen**. They have other diagrams showing the paths of bullets.

Mr. **Lowery**. They've got a diagram back there, drawn and showing a path, mimeographed out.

Mr. **Merritt**. Demonstrates it together with the other exhibit here.

Mr. **Wilson**. I think Your Honor went into this matter very early in the trial and came to a very satisfactory conclusion if it was not necessary for the purpose of determining some other physical fact, that to use the photograph——

The **Court**. Yes, I understand, let me see the other exhibits that I did admit.

Mr. **Merritt**. That one and that one right there. Those two taken together is what I would like to——

Mr. **Lowery**. If the Court please, Mr. Beard didn't testify to the manner in which anybody was shot.

Mr. **Merritt**. Said the man was lying down in the back seat of the automobile asleep.

Mr. **Lowery**. When he got out of the automobile.

The **Court**. I understand; you don't have to talk [3506] about it.

Was this admitted in evidence, or was that for identification?

The **Clerk**. This was for identification.

The **Court**. I think in view of this latest testimony, it would be competent. I'll admit it.

Mr. **Binkley**. I would like to note an exception for Bostic.

Mr. **Quillen**. Note an exception also, if the Court please.

Mr. **Wilson**. The defendant Ethridge notes an exception.

The **Court**. Let it be admitted; pass it to the jury.

The **Clerk**. Plaintiff's Exhibit 5.

(Plaintiff's Exhibit No. 5 for identification was admitted into evidence.)

* * * * *

[3507–3531] * * * * *

[3532] * * * * *

Mr. **Bateman**. Your Honor, I think it might be helpful, in the absence of the jury, to get a ruling on what Mr. Quillen hopes to prove by this city detective. I'm the one who is going to object to it, and I understand that he's going to show by him that some month before Ferguson's death, that Ferguson told this witness that Self tried to kill him.

I think that's highly objectionable, and I don't think any amount of instructions, if it's [3533] admitted, would cure it.

The **Court**. That is your purpose, but on what theory do you think it's admissible?

Mr. **Quillen**. Well, I think it's admissible to show that someone other than this defendant, in the light of the entire record, actually killed James Larry Ferguson.

Of course it's hearsay; we do have this record full of it though.

The **Court**. I don't agree with that. We have some hearsay evidence coming in under exceptions to the hearsay rule that have been admitted, and that's in the case where statements are made in furtherance of the conspiracy, and dying declarations, and so on, but——

Mr. **Quillen**. Your Honor——

The **Court**. What exception to the hearsay rule would this come under?

Mr. **Quillen**. Frankly, I can't state——

Mr. **Lowery**. If the Court please, it would come under the same exceptions as all of Ferguson's statements have been allowed to be testified to as statements——

The **Court**. No, I don't see that. There have been some statements admitted of Ferguson made to co-conspirators where he was engaged in an effort to carry [3534] the conspiracy itself, that is to other parties in the conspiracy to solicit their help and so on. There have been statements of that nature and some others, but how would this further the objects of the conspiracy for him to tell——

Mr. **Quillen**. I don't think that it would. I might state though that Sergeant Dennis came here——

The **Court**. Excuse me. Wait just a minute.

All right, go ahead.

Mr. QUILLEN. At the time the bond hearing was conducted before Your Honor, shortly after the indictment, the government saw—called Sergeant Dennis, and the Court did receive testimony that James Larry Ferguson had told Mr. Dennis that he had been bonded or bailed out of jail by a man known as John and was taken off out here near the Cheatham County line somewhere at which time a man drew a pistol and snapped it some two or three times.

I don't recall whether he testified at that time or not, but it is my information that Ferguson also related to Mr. Dennis that after this snapping of the pistol, didn't discharge then, that there was an attempt to run him down with an automobile. That, so we are informed, was the automobile belonging to John Leeman.

[3535] The COURT. Well, what is your view about the admissibility of this testimony, Mr. Merritt?

Mr. MERRITT. For the purpose of rehabilitating the credibility of the defendant Beard, I think it's probably admissible. It would be for a non-hearsay purpose on that ground, that is to support his credibility, and it would seem to me that's about the only ground it could come in on.

The COURT. What was his testimony on that point?

Mr. MERRITT. I would like for the jury to hear it, but——

The COURT. Of Beard?

Mr. QUILLEN. Of course Beard, and there was some confusion there, he had made a statement to the effect that—it was recorded in the FBI report, "I knew something about somebody trying to take his life."

Well, of course on cross examination, we got in the edge of trouble, you might say. Actually, it was a hearsay matter to him, and then he denied the knowledge, but did admit that he had heard that.

The COURT. Yes.

Mr. QUILLEN. And——

Mr. KNIGHT. Also, Your Honor, Donny Ferguson testified that he had heard the same thing from Beard [3536] and that he had heard about the snapping of the pistol and all of the details, and Beard takes the stand, and we ask Beard if he does know about that, and he says—his explanation is that he heard about it from Ferguson, and that goes to his credibility, and if Ferguson is saying that, that rehabilitates Beard to that extent, it seems to me.

Mr. Quillen. I could see how it would be highly prejudicial to Mr. Self, but I could think——

The Court. I'll give it some consideration during the recess.

(Whereupon, a short recess was taken after which the following further proceedings were had in the presence of the jury:)

* * * * *

[3537–3564] * * * * *

[3565] * * * * *

The Court. Does that complete the proof in the case?

Mr. Merritt. Yes, sir.

[3566] The Court. The government and all of the defendants?

Mr. Lowery. Yes, sir.

The Court. I assume so.

The matter that we were discussing before the recess, I understand, has been obviated; we don't have that?

Mr. Quillen. Yes, sir.

The Court. All right.

* * * * *

[3567] * * * * *

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

* * * * *

[3568–3574] * * * * *

[3575] * * * * *

Mr. Binkley. If Your Honor please, I would like to renew my motion for the same reason. I make no further argument, because we offered no proof after the government rested its case.

The Court. You may rely upon the same grounds that you made at the conclusion of the government's case.

Mr. Binkley. I would like to say at this time that there has been no showing, if in fact a conspiracy existed, that Mr. Bostie participated in it, and by the government's own proof, he couldn't have participated in anything after June the 5th.

[3576] The **Court**. After what?

Mr. **Binkley**. After June the 5th, because he was incarcerated from that time up until today, and my argument is the same as Mr. Wilson concerning these witnesses as I've stated before, it's all hearsay testimony, and statements of parties that wouldn't be competent for any reason but the conspiracy, and we don't feel the conspiracy has been proved.

* * * * *

[3577] * * * * *

The **Court**. All right.

At the conclusion of the government's case, I think I overruled the motions that were made at that time, and at this time, I reserve ruling on all of the motions pending the submission and outcome of the case before the jury.

* * * * *

[3578] The **Court**. Are you requesting a Pinkerton charge in this case?

Mr. **Merritt**. I'm not familiar with that name.

The **Court**. That's the style of the case, Supreme Court case.

Mr. **Merritt**. The one on impeachment?

The **Court**. No, that's the charge to the effect that if the jury find that these parties were guilty of a conspiracy to rob these banks, and any one of them robbed a bank in execution of the conspiracy, if there's found beyond a reasonable doubt that they would be liable whether they were actually present at the time the bank was robbed or not.

Mr. **Merritt**. Yes, sir. I don't think I have the charge in the language of that case, but I have the charge under——

The **Court**. This is distinct from aiding and abetting, you understand.

Mr. **Merritt**. I'll have to check, but I believe I have that charge. It's in Judge—the instructions, Federal Jury Instructions Manual, I'm sure Your Honor is familiar with that.

The **Court**. I haven't seen it in the manual, but I've read the Supreme Court case.

Mr. **Merritt**. If Your Honor would——

[3579] The COURT. It seems to be the law, an opinion by Justice Douglas, and then reaffirmed in the later Nye case, which was an aiding and abetting case. It was not reaffirmed directly, but indirectly.

Mr. WILSON. I have heard that charge, and I do feel like in this case, if Your Honor please, that we would object to it due to the fact that we feel it was inappropriate because the jury could possibly find that there were more than one conspiracy in this particular instance.

The COURT. Then I would have to charge the jury that if there was more than one conspiracy, it would be a fatal barrier.

I would have to charge that there would be one continuous conspiracy with perhaps members dropping off and joining, but that is the theory of the indictment that there was one conspiracy.

* * * * *

[3580–3582] * * * * *

[3583] * * * * *

Mr. BATEMAN. Your Honor, for the record, may I say that I have examined these charges and wish to adopt them for the defendant Self, and I will have one more based on the Borum case.

[3584] Mr. BINKLEY. Show me joining in with Mr. Bateman.

* * * * *

[3585–3857] * * * * *

[3858] (Whereupon, at 9:15 o'clock a.m., Court was reconvened pursuant to the adjournment, and the Court charged the jury as follows:)

[3859–3864] * * * * *

[3865] * * * * *

The COURT. Prior inconsistent statements are not in and of themselves, as I have instructed you during the course of the trial, substantive evidence. They may be used, however, on cross examination for purposes of impeachment or to refresh a witness' recollection or where a party is taken by surprise by his own witness' testimony, the Court may permit the pretrial statement to be used as the basis for cross examining [3866] the witness in an effort to have him accept such statement in whole or in part as his present testimony. To the extent that he does so, his present testimony is substantive proof to be weighed as to credibility and value by the jury, but in that event, it is the witness' present testimony that constitutes substantive proof, and not the prior inconsistent statement.

* * * * *

[3867–3869] * * * * *

[3870] * * * * *

It is the duty of the Court to admonish an attorney—I don't think this has been done very frequently during the course of this trial—to admonish an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure. You are to draw no inference against the side to whom the admonition [3871] of the Court may have been addressed during the course of the trial, as it is the duty of attorneys on both sides of the case to object when the other side offers testimony or other evidence which counsel believes is not properly admissible. When the Court has sustained an objection to a question, the jury should disregard the question and may draw no inference from the wording of it or speculate what the witness would have said if permitted to answer.

Upon allowing testimony or other evidence to be introduced over the objection of counsel, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, you are the sole judges of the credibility of all of the witnesses and the weight and effect of their testimony.

* * * * *

[3872–3879] * * * * *

[3880] * * * * *

It now becomes necessary for the Court to instruct you as to the law applicable to a conspiracy charge. The crime of conspiracy alleged in the first count of the indictment is covered in Section 371 of Title 18 of the United States Code which is referred to in the first count, and this section of the Code, you must have the law before you when you consider this count as well as the other counts, this section of the Code provides as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy," each shall be guilty and shall be punished as prescribed by law.

I will instruct you later with respect to any question of punishment. I think I have already told you it [3881] is a matter which addresses itself to the Court and not to you as members of the jury.

Now the government must establish each of the following beyond a reasonable doubt in order to prove the crime of conspiracy set forth in the first count:

First, that the defendants so charged knowingly and willfully were parties to an agreement entered into at or about the time alleged in the indictment;

Second, that the object of the conspiracy was to commit an act or acts which constituted an offense against the United States, and in this particular case the offenses against the United States which it is alleged constituted the object of the conspiracy were violations of certain sections of Title 18 of the Code, Section 2113, and I will read these sections for you in detail later;

Third, the fact that must be established is that an act was thereafter committed by one or more of the parties to the agreement in order to carry out or to further the object or purpose of the agreement.

With respect to the formation of a conspiracy, I instruct you that the government need not strictly adhere to the allegations of the time stated in the indictment, especially where the allegation is not of an exact period, but one beginning on or about a certain date and terminating on or about a later date, that the conspiracy, if you find that one [3882] existed, was formed sometime after the date alleged or that it did not last as long as it is alleged, is not a ground on which to acquit the defendant, but is sufficient if the evidence shows beyond a reasonable doubt that the offense was committed in the time period covered by the charges and that its inception was on a date reasonably near the date alleged.

A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not in itself criminal or unlawful by criminal or unlawful means. It is, in short, a partnership in criminal purposes. The gist of the crime is the confederation or combination of minds. A conspiracy is constituted by an agreement. It results from the agreement, and it is not the agreement itself. The agreement out of which it grows need not be a formal one or in writing, nor need it be an explicit contract which states what the unlawful scheme is to be.

Indeed, it would be extraordinary if there were such a formal agreement. When men in fact enter into an unlawful agreement, much of it is left to unexpressed understanding. Almost always the existence of the agreement is a matter of inference deduced from the acts of the persons accused which are done in pursuance of an apparent criminal purpose.

The agreement may be shown by a concert of action, all the parties working together understandingly with a single design for the accomplishment of a common purpose. [3883] It is the common design which is the essence of the conspiracy or combination, and this may be made to appear when the parties steadily pursue the same object, whether acting separately or together by common or different means, but always leading to the same unlawful result.

As stated above, direct proof of a criminal conspiracy is not ordinarily available, and the common purpose and plan are disclosed only by a development and collocation of circumstances.

Briefly stated, the government claims that the testimony and circumstances in this particular case shown to exist or to have existed give rise to an inference that the defendants did enter into an agreement to pursue this common purpose, to violate certain sections of the United States Code relating to bank robberies, which I shall explain in detail later, and that it was their common plan, design and purpose to act together in concert to carry out their unlawful objective and that this inference can be drawn and should be drawn beyond a reasonable doubt from all of the evidence in the case.

The defendants deny that a conspiracy has been proved, or that it can be inferred from the facts. They say that the proof in fact shows that there was no such conspiracy. At the very least, they say that there is a reasonable doubt as to such an alleged conspiracy, and for this reason alone the finding on this issue must be in their favor.

[3884] The government has the burden of proving that the defendants participated in the alleged unlawful conspiracy knowingly and willfully. This does not mean that the government must prove that a defendant knew all of the details and operations of the venture as one may become a member of a conspiracy without full knowledge of its details or even without knowledge of all of its members.

It does mean, however, that insofar as the defendant's participation is concerned, the burden is on the government to satisfy you beyond a reasonable doubt that such defendant joined the alleged combination intentionally and deliberately, as opposed to negligently and inadvertently, and he knew what the purpose of the agreement was.

It is for you to decide, however, from all of the material evidence first whether any defendant participated in the alleged conspiracy, and if so, whether such defendant did so knowingly and with knowledge of its purpose.

* * * * *

[3885–3888] * * * * *

[3889] * * * * *

With respect to the third element that I have previously mentioned in regard to count one, that is the performance of overt acts by one of the alleged conspirators, I instruct you that an overt act is an act apart from the conspiracy and performed to effect the object of the conspiracy. An agreement among several persons without the commission of an overt act is not a violation of the statute, that is it does not constitute a punishable crime. To complete the crime, it is necessary that an overt act must be performed by one of the conspirators.

The overt act need not be, although it may be, criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as a man walking across the street or driving an automobile or mailing a letter or using a telephone.

It must, however, be an act which follows and tends toward the object or purpose of the plan or scheme and performed while the scheme is in existence, and it must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

[3890] The indictment in this case enumerates, as I have read to you, eleven overt acts which it is alleged were performed by conspirators to effect the object of the conspiracy. It is only necessary that you be convinced beyond a reasonable doubt that one of these acts was knowingly performed in furtherance of the conspiracy in order to satisfy this particular requirement of the law.

The overt act requirement may be satisfied by evidence concerning the performance of an overt act by any of the alleged conspirators or by a duly-authorized agent of the conspirators. Whatever a person is legally capable of doing himself may be done through another as an agent. Hence if the acts of an employee or other agent are knowingly ordered or directed, the law holds the person giving the order or direction responsible for such acts as though they had been personally performed by him and since co-conspirators are, as a matter of law, agents for one another with respect to any acts or statements in furtherance of the conspiracy, the acts of any agent of a conspirator is considered to be the act of the defendants, if you find by independent evidence that the defendants were participants in the conspiracy.

You must first determine from all of the evidence in the case relating to the period of time defined in the indictment whether or not a conspiracy existed.

In considering whether or not a defendant was a member [3891] of such conspiracy, you must do so without regard to and independently of the statements and declarations of others in the conspiracy. In other words, you must determine the membership of the defendant from the evidence concerning his own actions, conduct, declarations or statements, and his own connection with the action and conduct of others.

However, if you determine that a defendant was a member of the conspiracy, using this test, you may then consider as if made by him statements, declarations and acts of other conspirators or their authorized agents which are made in furtherance of the conspiracy and during the period of its existence.

In considering, under this test, whether a defendant was a member of the conspiracy, you may look to his acts and statements as testified to by himself or by others. If you are satisfied by such evidence beyond a reasonable doubt that a defendant was a member of the conspiracy, you may then consider statements and acts made by other conspirators and their agents in furtherance of the conspiracy as having been said or done by the said defendant.

Now count one of the indictment proceeds upon the theory that there was one conspiracy only, one continuing conspiracy over the period or approximate period of time alleged in the indictment. If it should be found by you that there is not one conspiracy, but two or more separate and [3892] distinct conspiracies, you would be required to acquit the defendants under the first count of the indictment, because in that event there would be a fatal variance between the proof and the charge of a continuing conspiracy set forth in count one of the indictment, but in that connection, the Court instructs you that if it be a fact that there was a continuing conspiracy, one continuing conspiracy contemplating the performance of a series of separate acts at separate times and over a period of time and in successive stages, the mere fact that, if it be a fact, that new members joined the conspiracy from time to time, and that some members dropped out of the conspiracy or withdrew from it, would not necessarily mean that there was more than one conspiracy, because it is possible in the theory of the law of conspiracy that there may be one continuing conspiracy to be accomplished in separate stages and over a period of time with members being taken on and dropped off from time to time, new members added and some members withdrawing.

However, in the case of a withdrawal, while it is of course possible for a person to withdraw from a conspiracy, the law in that connection is that once a conspiracy is shown to have existed with the membership being identified by the proof, in order for one of the members to withdraw, affirmative action is required to show or to establish such withdrawal, affirmative action on the part of such member [3893] withdrawing.

Theoretically, it could be a withdrawal in writing, although writing is not required to constitute a withdrawal, but some affirmative act clearly indicating that the conduct of the party withdrawing is inconsistent with his association with the conspiracy, and his connection with it is required in order to establish a withdrawal.

Now briefly stated, and then we'll take a short recess and then finish the charge thereafter, summing up, with respect to count one of the indictment, the government contends in this case that you should find from the total evidence and from the reasonable inferences and conclusions which you are entitled to draw from the facts and circumstances of the case as you find them to exist, that the defendants entered into an agreement, although it was not formally expressed, and into a common understanding that they would engage upon and venture into the unlawful enterprise of robbing banks which were federally insured banks under federal law, that in accomplishing the purpose or objects of this conspiracy, one or more of the overt acts set forth in the indictment was accomplished or performed by one or more of the conspirators knowingly, and that consequently the offense of conspiracy is established in count one of the indictment as alleged in count one of the indictment, and that it is your duty under the law, since these facts as the government contends, are established beyond a [3894] reasonable doubt, to return a verdict of guilty, that there was only one continuing conspiracy, that two or more separate and distinct conspiracies did not exist, although it was the purpose of the conspiracy, and it contemplated that its objects and purposes would be accomplished over a period of time in successive stages, and in the robbing of one or more banks.

* * * * *

Now the defendants, on the other hand, contend that the government has failed to make out a case of conspiracy, that they have failed to show that an unlawful enterprise such as alleged in the first count was entered into by [3895] the defendants, that they have failed to show that any—all of the defendants contend that the government has failed to show—that the proof fails to show that they were members of an unlawful confederation or agreement as alleged, or that they knowingly participated therein, that there is a reasonable doubt about the existence of these facts, and therefore that it is your duty to return a verdict of not guilty under the first count of the indictment.

* * * * *

[3896–3903] * * * * * *

[3904] * * * * * *

Testimony has been offered and permitted by the Court during the course of the trial relative to statements made by one or more of the defendants on one or more occasions, examples being testimony of the witnesses Leeman, Carney, Farmer, Letos and others, detailing statements made by certain of the defendants on different occasions. Such statements, if you find that they were made, are to be weighed and considered by you with respect to the particular defendant to whom the statement is attributed under the conspiracy count, and to the extent relevant also under the substantive counts in which such defendant is charged.

Such statements are not in any way to be considered as evidence with respect to any defendant who did not make the statement or who was not present when the statement was made except under the conspiracy count of the indictment. Even then such statements are to be considered as to other defendants under the conspiracy count of the indictment only if you find that there was a conspiracy as charged, that the defendants, including the defendant making the statements, were members of such conspiracy, and that the statement or statements were made to further some object or purpose of the conspiracy, and during the time the conspiracy was in [3905] existence. This is upon the theory that in an unlawful conspiracy, each conspirator in carrying out the conspiracy acts as the agent for other members, and his acts and statements are attributable to them.

The intentional flight or concealment of the defendant immediately after the commission of a crime or after he is accused of a crime that has been committed is not of course sufficient in itself to establish his guilt, but it is a fact which, if proved, may be considered by the jury in the light of all other evidence in the case in determining guilt or innocence. Whether or not evidence of flight or concealment shows a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury.

* * * * *

When a defendant voluntarily and intentionally offers an explanation or makes some statement tending to show his innocence and such explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily it is [3906] reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury.

Here again, a statement or an act is knowingly made or done if made voluntarily or intentionally and not because of mistake, accident or other innocent reason.

The party calling a witness is not bound thereby where such testimony is inherently improbable, where, to the party's surprise, the witness turns out to be unfriendly or hostile or testifies to the contrary of what the party, in good faith, was led to expect, or where the witness is adverse, as stated, hostile. Under those circumstances, if they arise, the Court permits the party calling the witness to cross examine the witness.

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[3907] * * * * *

Mere proof, standing alone, of the presence of the defendant at the scene or location where others are engaged in planning a crime is not evidence that he was aiding and abetting in the commission of the crime, but such presence is a factor which the jury should consider in combination with other facts in the case in determining such aiding and abetting.

I further instruct you, ladies and gentlemen of the jury, although I have covered this in substance previously in the charge, but since it is requested, I instruct you that one may withdraw from a conspiracy by affirmative action. Such affirmative action may be shown either by direct or circumstantial evidence. It may, as I have previously stated, of course, theoretically at least, be in writing, or expressed by oral agreement, or it may be indicated by conduct wholly inconsistent with the theory of continuing adherence to the conspiracy.

I further instruct you, as requested by one of the parties, members of the jury, that an accused may join in the agreement—must join in the agreement to be guilty of [3908] conspiracy, and even if he commits an overt act, he does not violate the statute unless he does join in the agreement itself. That is the unlawful conspiracy agreement.

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[3909–3912] * * * * *

[3913] * * * * *

Now in connection with this particular count, you will be called upon to consider testimony which the Court has admitted for your consideration relative to dying declarations attributed to the deceased Ferguson. This kind of testimony comes into the case and is allowed by the Court for your consideration under an exception to the hearsay rule. Ordinarily a witness is not allowed to testify to some statement which he heard someone else make who is not present in Court, or whether he is present or not present if it is someone who is not a party to the case, some statement that is made by a third person, attributed to a third person, is not normally admitted into evidence, because it constitutes hearsay testimony.

There are exceptions to this rule, however, excluding hearsay testimony, and one of them is in the case of [3914] dying declarations if certain conditions are satisfied. Now this kind of evidence, while it is allowed by the Court for consideration of the jury, if the Court finds the necessary conditions to exist for its admission, it is to be weighed and considered by the jury with caution and care. It is incumbent upon you as the tryers of the facts in this case to weigh and consider and to evaluate this testimony and determine what weight and what value it has in connection with count eight of the indictment.

Now, in the first place, you must determine from the evidence what the declarations actually were which were made by the deceased Ferguson, if they were made. You must determine the content of the statements, what did he actually say. That, of course, is a fact issue for you to determine.

After you have determined what he actually said, then it is incumbent upon you to determine what weight and value should be given to those statements in the context of the case and in the light of all of the attendant circumstances.

The purpose of the government in offering such testimony in this case which the government insists you should accept is to identify the alleged killer of Ferguson, and to show his reason or purpose for bringing about the killing of Ferguson.

Now whether or not the testimony has value for these purposes, and whether or not it is sufficient to [3915] accomplish the purposes for which it is offered, is a matter for you to determine.

Now one thing you should take into account in connection with this type of testimony is whether or not the declarant, that is, the deceased Ferguson, at the time the statements were uttered, was of rational mind, and in determining whether or not he was of rational mind, which you must find before you should give this kind of testimony any weight or value, you must look to all of the circumstances in the case.

First you should consider what he actually said, the content of his statements, the circumstances under which he made these statements, the number of times that the statements were made, what happened before the statements were made, the nature and character of the wounds which were inflicted upon him, and the conditions under which he was suffering at the time, and take into account any other factor which would have a bearing in your determination as to whether or not at the time he made these statements, he was capable mentally of identifying the person who killed him, and in stating the purpose or motive therefor.

The second thing that you must find, or factor that you must find before you should give weight and value to this type of testimony would be that the declarant, that is, the deceased Ferguson, at the time he made these statements knew that he was about to die, and that death was imminent. [3916] That is one of the conditions for the admission of this type of evidence, based upon the theory that a person who is laboring under the knowledge that he is going to die is more likely to tell the truth than he otherwise might be likely to do, having that apprehension and that fear of death and that knowledge that he is going to die, that this testimony may have greater weight than it otherwise would have, and therefore, should be admitted for the consideration of the jury.

Now whether or not the declarant in this particular case knew that he was going to die is another factual question for you to resolve, and you would do so on the same basis that you would in determining the rationality of his mind, the nature of the wound that he had, the number of wounds, their character and extent, his conduct at the time and immediately before the statements were made, and any and all other relevant attendant circumstances in arriving at the conclusion as to whether or not at the time he made these declarations, he knew that death was about to occur.

Now under those conditions, the law allows this evidence to go to the jury and allows the jury to take it into account, weigh it, to consider it and evaluate it.

Now to the extent that you may find that a part of a statement undertakes to set forth the motive for the alleged killing—for the killing of Ferguson—before you should give this part of the statement—if you find that this [3917] statement was made by the declarant, you should determine that the declarant, that is, the deceased Ferguson, either knew or had the opportunity for knowledge as to the acts that are declared.

In other words, did he know or have the opportunity to know the motive or purpose which the alleged killer had in mind for taking his life, and in determining whether or not he had such knowledge, you would look again to the attendant circumstances, the relationship between these two parties, the declarant and the defendant Beard, their associations together, if any are established by the evidence, the character of those associations, their being together on the evening or at the time or immediately preceding the killing itself, and under what circumstances, whether or not they had been associated together or concerned together in unlawful enterprises involving the robbing of banks. You would have to take those facts into account in considering whether or not Ferguson had the knowledge or the opportunity for knowledge to know the motive or purpose of his killer.

The form of the declaration is not decisive, though it may be in part a statement of a conclusion; a statement of the result with the antecedent steps omitted. One does not hold the dying to the observance of all of the niceties of speech to which conformity is exacted from a witness on the stand. What is decisive is something deeper and more [3918] fundamental than any difference of form.

The declaration should not be given any weight or value if the setting of the occasion satisfies the tryers of the facts—

and that means you, the members of the jury—or in reason ought to satisfy the tryers of the facts that the speaker is giving expression to suspicion or conjecture and not to known facts which he has an opportunity to know.

Now in this case, in considering count eight, the same as with respect to all other counts in the indictment, you will consider not only the declarations which I have admitted for your consideration, made by the deceased Ferguson, and prior to his death, but of course all of the other testimony in the case, all of the other relevant facts and circumstances.

You must find, in order to find the defendants guilty or any one of them guilty, that they participated in the killing either directly or by aiding and abetting the killing of the deceased Ferguson, and that the motive or purpose was to avoid or attempt to avoid apprehension for bank robberies as set forth in these counts of the indictment to which I have just referred.

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[3919–3920] * * * * *

[3921] * * * * *

All right, let the jury retire, but do not begin [3922] a consideration of your verdict at this time until I call you back in the courtroom. I want to take up a few matters with counsel that will be very brief.

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

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[3923–3930] * * * * *

[3931] * * * * *

Mr. Binkley. We don't have any requests for additional charge.

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[3932–4003] * * * * *

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